HIS MAIESTIES ANSVVER TO THE DECLARATION Of both Houſes of PARLIAMENT.

Concerning the Commiſsion of ARRAY.

Of the firſt of *July*, 1642.

With his *MAJESTIES* Anſwer to the Declararation of the Lords and Commons in PARLIAMENT; for the raiſing of all Power and Force, as well Trained Bands as others, in ſeverall Counties of this Kingdome, to lead againſt all Traytours and their Adherents, &c.

YORKE,
Printed by ROBERT BARKER, and now reprinted at *London*, 1642.

HIS MAIESTIES ANSVVER TO THE DECLARATION Of both Houses of PARLIAMENT.

Concerning the Commission of ARRAY.

Of the 5th of July. 1642.

With his MAIESTIES Answer to the Declaration of both Houses of PARLIAMENT, for the raising of a Power and Force, as well Trained Bands as others, in Every all Counties of this Kingdome, to lead against all Traitors and their Adherents, &c.

YORKE,

Printed by ROBERT BARKER, and by the Assignes of London, 1642.

His *Majesties* Answer to the Declaration of both Houses of *Parliament*, concerning the Commission of *Array*.

HAving first received, by the published Votes and Declarations of both Our Houses of *Parliament*, severall informations of evident and imminent danger unto Our Kingdom, *from Enemies abroad*, and *at home*; and finding that Our Commissions of Lieutenancy (although We did since the beginning of this *Parliament* grant the like for the County of *York*, to the now Earle of *Essex*, with the privity of both Our Houses of *Parliament*, and without exception from either; and that the same was the meanes for defence of this Kingdom used in the happy times of that good Q. *Elizabeth* and Our blessed Father, and confirmed as well by the opinions of Iudges and Lawyers, as the universall obedience of the Subjects) were all of them, without hearing any of our Counsell learned, voted illegall, and by Our House of Peers called in to be cancelled: And that thereupon Our Kingdome lay open and exposed to all dangerous attempts without other provision than of a late pretended Ordinance of both Our said Houses; which (being made without Vs, and contrary to Our expresse Will declared, and after it had beene twice refused in Our House of Peers, & after the departure of a major part of the Peers) was so far from being a means to prevent danger, that if it should have been admitted, it would in all probability have been the ready way to confusion, and ruin, as being made in an unparliamentary, unpresidented, and unjustifiable way, and therefore of a most dangerous consequence, both to Vs and Our people, as well in that particular, as in the Example.

We did therefore, for the avoyding of the perill of delayes and expence of time in disputes, issue forth such Our severall Commissions of *Array* into our severall Counties, as upon great advice We conceived were not only secure for, but also might well be most satisfactory unto both Our Houses, as being beyond all just exception in the point of Legalty, Danger, or Inconvenience, the same having been heretofore most deliberatly agreed upon and settled (as We shall herein shew) in, and by the care and wisdome of the *Parliament*, held in the 5 yeare of King *Henry* the 4.

And We expected for this Our so Princely care of Our people, and observance of our Laws, rather the dutifull thanks of both Our Houses, than the return of such an Answer or Declaration as cauteleslesly imputes to this Our so well intended & justifiable act, not only (upon mi construction and misapplication of severall *Acts* & *Declarations in Parliament*) the tax of illegality, but also marketh it (upon the misrepresentation of divers Powers, and omission of divers Limitations in our Commission) with the brand of extreme danger, & inconvenience therby to our people, & of an heavier Yok of bondage than either that of the late Shipmoney, or eny other charge taken away this *Parl.*

In all which, for the better and further satisfaction of Our well-affected people, and to save them (if possible) from incurring any danger either by obeying that Ordinance, or disobeying our Commissions, (in both which We are resolved to require a strict examination and account) We have taken the pains to examine the said Declaration, and the objections therein against our Commissions.

And for the better understanding of the severall particular doubts which are now raised thereupon, We hold it necessary in the first place, to set forth the true end of these Commissions, with the severall Powers and Limitations thereof, which by this Declaration are drawn into question, together with the severall misrepresentations thereof in this Declaration.

The Subjects being of three sorts; Some having good estates and able bodies; Others, being of good estates, but impotent; Others, able of body but not in estate. And the service required, being for the necessary defence of our Kingdom in generall in the time of danger.

The Commissioners are to cause those of the first sort, to *Arme* themselves according to their degree and estate, (and serving in Person, they are not bound by this Commission, to find Arms for any others.)

Those who (having estates) are not able to serve in person, are to be assessed, and may be distrained to find *Arms* for others, according to the quantity of their Lands and Goods; But with this limitation, *Prout rationabiliter portare poterunt, & salvo statu suo*; that is, *That they be charged but moderatly, and so as they may live still, according to their former condition.*

As for those of the third sort, who are not able to *Arme* themselves, by this Commission, as it was altered by common consent in 5 *H.* 4. (for it was otherwise before that time) they are not (as to this matter of Arming) meddled withall.

And therefore this part of Commission, is misrepresented in the Declaration; Which supposeth a Power given by this Commission, to charge all men *without distinction*, with *Arms, at the discretion of the Commissioners*, without limitation; And those that are able *to find Arms*, and such as are impotent, *to find men at Arms*, according to the quantity of their lands and goods; And also wholly omits the manner of the charging them, which is *to be moderatly, and so as they may still live, according to their former condition.*

The Commission having thus, with equalty & indifferency charged our subjects with provision of *Arms*, it further provides for their calling together, training, & exercising, not (as it is in the *Declaration*) generally (*at the pleasure of the Commissioners without restraint, either of time or place*) but that they shall be called together, *ad certos dies & loca quos videritis magis competentes & expedientes, & pro populo nostro minus damnosos; at such times and places, as the Commissioners shall think to be most fitting and expedient, and least burthensull unto the people.* And having thus provided, for the *Arming* and preparing our subjects, for defence of the Kingdom; In the next place, the Commission gives power to the Commissioners, to lead them to the Sea-coast, or elsewhere, but not *at the pleasure of the Commissioners* (as may be inferred out of the *Declaration*) nor *without Limitation* (though omitted also in the *Declaration*:) But the Commission provides, That they are to be led to the Seacost, or elsewhere, *ubi ac quoties necesse fuerit ad inimicos nostros expellendos rebellesque & destruendum cum periculum imminet; at such times and places as it shall be necessary for the expulsion, vanquishing, & destruction of our enemies, when there shall be imminent danger.* And it further provides in another part of the Commission, That they shall be conducted, *Cum periculum imminuerit in defensionem regni & patriæ tam ad Costeram maris quã alia loca ubi magis necesse fuerit, In case of imminent danger, for defence of the Kingdom and Countrey from time to time, as well in the Seacost, as other places where it shall be most necessary.*

And

And although notwithstanding all these limitations and cautions, it be true, That in this charging of *Arms*, as also for the times and places of calling together our Subjects, and of conducting or leading them, and the dangers upon which they are to be so conducted and led, much is left to the discretion of the Commissioners (as it must of necessity in all Commissions, where the places, times and occasions of execution of them depend upon future accidents and circumstances, and cannot be certainly known or described at the time of the issuing of the Commissions) Yet nevertheless it cannot be inferred therupon, That therefore our Commissioners have a mere absolute arbitrary liberty of Will to do what they please. But that if they shall wilfully & unjustly grieve any of our good Subjects, in exceeding or not observing our Limitations or Directions, they are, by Law, clearely punishable by Indictment for the same: Nor are, or shall any of our Subjects so grieved be without remedy or relief.

And to the end that every County, so far as in Vs lyeth, should have cause to rest the more assured against any evill usage and abuse, by this Commission We have appointed for Commissioners, such as have estates in the several Counties, and are persons of Honour and Reputation, who are not only engaged to all faireneſſe out of their own interest, but also in the concernment of their Posterity, Kindred, Alliance, Friends, and Tenants, and the good affection of their Countrey, which to persons of such condition as they are, is of a consideration beyond their Fortunes; So that We hope their forwardneſſe in undertaking this trouble, for the publick defence, will occasion in our good Subjects, rather a willing obedience unto Vs, than the least distrust or jealousie of any of them.

Having thus stated the substance of our Comission, & prevented that misunderstanding, which this *Declaration* might have else begotten therupon; We (in the necessary justification thereof, and vindication of our own Honour, against those expressions in that *Declaration*, which so nearly do concern Vs (under the comon name of evil Councellors) as if We had violated our Laws, even those so lately made; broken our often Protestations of governing according to Law, and done that which would bring our people into slavery) shall now joyn issue with our two Houses, in every material part of their *Declaration*, both in the consideration of the pretended *Danger*, *Inconvenience*, and *Illegality*. And herein first, for the pretended *Danger*, & *Inconveniency* so much urged; We do deny, *That this Commission is full of Danger, or Inconveniency to our subjects, or will bring an heavier Yoke of Bondage than the Shipmoney, or any other illegall charge, taken away this Parliament; or indeed any Danger or Inconvenience at all.* And therein We appeal to each good mans conscience and reasonable understanding, in a Kingdom (as this is) which in its fundamental policy (as well for its own assurance, against the danger of Forein aids, as the bad use that might be made of great constant Forces, (whether forein or native) must necessarily be defended by it self: What other way of defence can be imagined but by the subject? What more reasonable proportion of charging them can be found? Wherin can the Limitation of the (otherwise Arbitrary) Discretio be bettered? Or how, in any one particular, can a more equall & fitting way be taken for the avoyding the grieving Our good subjects in their own particulars? Yet with all providing for the defence of our Kingdom in the gene al, than is by this Comission?

And We cannot but professe our wonder, That since (as we shall shew) this very Comission, was with so much care, both in respect *of the Commissioners & the power of execution therof, over the persons to be cōmanded*, allowed and settled in all points to the very

desires of the people (and that in *Parliament*) in the 5 year of K. *H.* 4, how such Danger, Inconvenience and Bondage can be by Our two Houses imagined in this act of Ours, without violating that rule so often urged by them (though not so properly applyed to them without Vs) That a dishonorable thing ought not to be imagined of the *Parliament*. And it is as strange to Vs, that all this should happen by this Commission, and yet that our Subjects should, for so many years past, have enjoyed so many happy dayes in the reigne of Q. *Eliz.* and Our Father, both of blessed memory, under the provision of *Lieutenancy*, which is agreed by this Declaration *to be little differing* from those of the Commission of *Array in the powers*.

And lastly, We demand, Whether the persons appointed over the *Militia* by Our Houses of *Parliament*, have not by their pretended ordinance or orders, most of those powers; nay, some greater over the Subject, in this matter of the *Militia*, than are in this Commission? and how they themselves can imagine these powers to be of a better nature by their authority, than they are by ours?

And as to this tax of danger and inconvenience, as in the generall it did require no answer at all, (though for the satisfaction of our people, We have therein thus inlarged our selves (so for that particular of the Yoke of Bondage thereby, in making it heavier than that of Shipmoney, since they have not shewd in what particulars, We shal say no more but this, That by this Commission *no money* at all comes to Vs or to our disposé, nor is any money appointed to be *raised*, but only *Arms provided*: And the *Arms* which our Subjects are charged to *bear* or *find*, are to be their *own* proper goods (which Sir *Richard Hutton*, in his Argument in print against the Ship-money, well observed, and thereby differenced the providing of *Arms* and payment of Ship-money) and are provided *once* for all, and not *yearly* to be renewed as taxes for money might be, and remaine in their *own custody*, & for their own defence as well as ours. We shall now proceed unto the next generall issue, touching the pretended illegality of our Comissio s of *Array*, and shall justifie the legality thereof by *Common Law* and by the *practise* of former Ages conform to it, and *by Statutes* in the very point against all the severall pretences mentioned in the Declaration, wherunto We shall give particular Answers.

And We shall first begin with the *Common Law*, wherunto the Declaration saith this Commission is contrary; and therein affirme,

That this Our Commission is warranted by the very fundamentals of Our Government, & (as We said in Our late Proclamation) the right of issuing thereof is inherent in Our Crown. For since (as We hope none will deny) the Kingdom must of necessity be ever in readinesse (in time of danger at least) by power of Arms to prevent or suppresse Rebellion at home, & Invasion from abroad; & to that end the Subject must be armed and prepared before hand, and conducted after, as there shall be occasion; and that this cannot be done without a Command or Government, We desire much to know in whom out of *Parliament*, (for *Parliaments* are not always, nor can be called at all times, or meet on the sudden) this power can be, but in Vs as the Supreme Governor, (as it is in all other States, be the persons of the Governors one or more, according to the form of each State) and can the Suprem Governor, according to his duty, and Our self more particularly, according to our Oath, otherwise afford Our people that protection which is due unto them in maintaining to them the Laws in the matter of Property & Liberty against private injury or oppression, as well as Our self, and them, and whatsoever

soever is deare unto any of Vs against Enemies or Rebells, especially the just Rights and Prerogatives of Our Crowne, wherewith God hath trusted Vs (according to the fundamentall and well established policy of Our State) as well for the peoples good as Our owne honour, both which must be preserved; And will any man say that by calling of Our Parliament, (which is but a meeting of Vs and our Subjects (and such they continue as well collectively in the two Houses, as they were before singly) and a meeting in its owne nature dissolvable at our pleasure; and though now enlarged by Vs in Time, yet not in Power) We are growne lesse or departed with any thing to them either by way of abdication or communication of Our Royall Power? This upon the common principles of Reason and Governme it is so obvious to every man, that We shall, for the present, proceed no further therein either by quotations of Acts of Parliament, or other legall authorities (some whereof Wee have recited in Our late Proclamations) till Our two Houses shall give Vs some justifiable instance of some good time to the contrary.

We come next to the continuall practice by Vs alledged (being alone sufficient to declare an Originall fundamentall Law of Our Kingdome, or at least by a tacit consent to introduce a Law) and to this purpose We shall shew that the power of *granting Commissions for the defence of the Kingdome* in the generall, whereunto onely Wee applied and doe applie the opinions of Sir *Richard Hutton* and Sir *George Crooke* (not meaning therein, as neither in Our Proclamation (as is cleerely mistaken) the present forme settled by 5. *H.* 4. (which We Our selves declared was made upon alteration) though for the substance thereof We might have said so much; and made it good, as it appeares by the Marginall Quotations) is warranted by the presidents in former Ages.

See the printed Arguments, fol. 25. 64, &c.

See 14. H. 3. in the printed Argument of Sir George Crooke. a Commission to the Bishop of Rochester and others, and to the Sheriffe of Kent, to cause all men at armes in that Country to be sworne, and to assesse them what armes they shall find. And divers other presidents there of Arrays in the armes of severall Kings. And see Cl 14, H. 3. m. 15, Dors. The like to other Countries. And 36, H. 3. (as appeares in the History of Matth Paris who lived at that time, Fol. 864) Rex constituit & generaliter per Angliam voce praeconia fecit acclamare missis super hoc brevibus ad singulos Comitatus ut secundum pristinam consuetudinem arma civibus competenter assignarentur & monstrarentur & censerentur ut essent sufficientia & competentia secundum cujusliber facultates. The King caused Proclamations to be made (for in such cases Proclamations declaratory were not conceived in those times to be illegall) and sent Writs into all Countries of England. (that according to ancient custome armes should be competently assessed (or appointed) for the people. And that they should be (mustered) or shewed and inrolled. that they might bee sufficient and competent according to every mans estate. And see Pat. 48. H 3, M. 3. Dors. & m. 7, Dors. Cl. 23. E. 1. m 5 Cl. 25 E. 1, m 17. Dors. in cedula pendent. Pat. 31. E. 1. m. 20. Cl. 16. E. 2, part, 1, m, 13, Dors, Pat, 18, E, 2, m, 2, and Ro, Vascon, 18, E, 2, m 4, 10 27, Cl, 7, E, 3, part, 1, m 25 Rot, scot, 10, E, 3, m 8 Franc, 26, E 3, m, 5. Cl, 34, E, 3, m. 22, scot, 7, R, 2, m, 9, Franc 10, R, 2, m, 24, pat, 4, H, 4, part, 2, m, 10 Dors, And after the Parl, of 5, H 4, see pat, 7, H, 4, part, 2. m, 3, Dors, 11, H, 4, pa 2, m, 28, Dors, Pat, 5, H, 5, part. 2, m, 37, Dors, Pat, 8, H, 5, m, 17, Dors, pat, 34, H, 6, m, 8. Dors, pat, 9, E, 4, part, 1, m, 1, Dors, pat, 12. E. 4, part, 1, m, 13 Dors, And very many more Commissions of Array in the severall reignes of these Princes, see Lam, fol, 131, A Law of King Edward the Confessour, Debent enim universi liberi homines, &c, secundum feodum suum, & secundum tenementa sua arma habere & illa semper prompta conservare ad tuitionem Regni & servitium Dominorum suorum juxta praeceptum Domini Regis explendum & peragendum, And Lib, Rubr, scacearii fol, 162. the Conquerour Law in these words, statuimus & firmiter praecipimus quod omnes Comites & Barones, & Milites, & Servientes & universi liberi homines totius regni nostri praedicti habeant & teneant se semper in armis & equis ut decet & oportet, &c. Upon both which it appears, that everyman as wel as the Kings Tenants, ought to have Armes according to his lands, for defence of the Kingdome, at the Kings Command. And Hoveden, pag. 614 in Anno 27. H. 2, Deinde Henricus Rex Angl. fecit hanc assisam de habendis armis in Angl, &c. King Henry the second made an assise of Armes for Defence of the Kingdome according to the differences of mens abilities, farre differing from that in 13, E, 1, And see Matth, Paris, fol, 224, A Writ of King Iohn to summon Omnes liberos homines & servientes vel quicunque sint & de quocunque tenentes, qui arma habere debeant vel arma habere possint, quicunque, &c. sint apud Doveram ad defendendum caput nostrum, &c, sub poena Culverragii.

And this practice, the Penner of this Declaration doth indeed not deny; for having before confessed the often issuing of Commissions of Array, after 5. *H.* 4. in the times of *H.* 4. *H.* 5. and *H.* 6. (and he might have brought it to later times, if he had so pleased) he doth afterwards confesse, that divers Commissions of Array issued in Divers Kings reignes before 5. *H.* 4. But as to this point of practice before 5. *H.* 4. he saith by way of Answer, That for the most part they were warranted by particular Acts of Parliament.

ment. And yet amongst so many presidents of severall Commissions, he gives instances onely of two yeares in 13. and 14. E. 3. of Commissions of Array then issued, warranted by Act of Parliament. Which, if true, doth no more disprove the legality of other Commissions of Array, constantly issued without a Parliament, then it doth of Commissions of Oyer & Terminer (which at the same time in 14. E. 3. together with the Commissions of Array were appointed to issue to the same persons) or of any other Act, which the King doth by the advice of his Parliament, though he may do it without them. Rather it implyeth the legality, & the former usage of such Commissions of Array, in that it appoints such Commissions to issue, but limits not all the particular Clauses or Powers to be inserted therein as a thing known and usuall to be done.

Rot. Parl. E. 17. 3. P. 2. N. 39. Rot. Parl. 14. E. 3 P. 1. N. 53.

But the truth is, both the presidents do concern the drawing of men out of the Kingdome to a forein War; & so are nothing to the purpose We have in hand. And that of 13. E. 3. is not at all a Commission of Array, but of another nature, giving power to the Lord *Wake*, & others to provide moneys, & to cause certain persons there named, who had particularly undertaken the service of the *Scotish* wars, *Leur arraier & appareiller d' aller vers Newcastle. To array & prepare themselves to goe to Newcastle* (whither they were to be brought at the charge of the Counties) and to bee there at a time appointed. Having thus set forth the continuall practice of issuing forth Commissions of Array in former ages (whereunto We never found, till now, any exception, as for *home-defence*) and the absolute necessity thereof, We doubt not but every indifferent Iudgement will easily conceive, that this power is a right in us by the Common Law, & the rather, when they shall consider, that a Commission of Array having bin issued by the K. in 5. H. 4. The Commons in Parliament that yeare, did not except to any part thereof *as illegall*, no, not to the Clauses, which seemed heavy over the Commissioners; nor did accept at all *to any the powers of execution thereof over the persons to bee commanded*, but did acknowledge the Royall assent, for the amendment & alteration of that Commission into the now present form, to be an Act of *great grace*. And herein We cannot but admire that the Penner of this Declaratiō should urge it as a reason why the Commons in that Parliament of 5. *H.* 4. complained not for relief against the Commission in the powers of execution over the persons to be commanded, because (as he supposeth) they knew that they were so clearly against the late Statute of 4. *H.* 4. Whereas (if it had beene so) they should the rather have complained, because they issued against so late a Statute so clear in the point, (unlesse the policy & temper of the times bee since much altered) for in a matter of so high a nature as the powers of this Commission, which (as this Declaration confesseth) did surely most concern them & the Kingdom, They were bound, as well in duty, as discretion, to have sought remedy against so great a violatiō, of the Law & Liberty & the rather at this time, when they thought fit to petition against part of the Commissiō, since an exception but to a part, especially by him which ought to complain against the whole, is a violent presumption of his allowance of the residue. We come now more particularly, to the examination of this Our Commission as it stands by Statute-Law, & herein (as in the matter principally insisted upon in the Declaration to be disproved) We do affirme, as formerly in Our Proclamation;

That this our Commission is warranted by Parliament in 5. *H.* 4 And to this purpose, we do observe, that this Declaration doth confesse; That the Record in the Parliament of 5. *H.* 4 concerning the Cōmission of Array, is an Act of Parliament; And that the Question is now, onely about the meaning thereof, Whether the *Parliament* meant thereby, onely to take away *some penall Clauses touching the Commissioners*; (as the Declaration affirmes, to which purpose, only it alloweth it for an Act) or else to settle also *the Powers of Execution thereof, over the persons to be commanded*, as we affirm. And

And therein (as We doe agree) that at the first, the Complaint of the Commons, was onely in respect of *some Clauses and Words therein, which were Grievous & dangerous to the Commissioners.* So it cannot be denyed, but that afterwards the Copie of the Commission so Complained of, was *delivered* by the King to the Commons, with an expresse Generall Liberty (without any restraint) to correct it *according to their own minds*, & thereupon the Commons did make use of that further Liberty, and corrected the Copy in divers materiall *Clauses*, and Words which concerned *the Powers of Execution*, as well as those which concerned the *Commissioners* (though the contrary be strangely affirmed by the Penner of this Declaration) as may appeare more particularly by the Clauses following, wholly omitted by him.

1. First, the Copie gives power, *ad armari faciend. omnes illos qui de corpore sunt potentes & habiles ad armand. tam illos qui de suo proprio habent unde seipsos armare poterunt, quàm illos qui non habent unde seipsos armare poterunt.* To cause to be armed, all those who have of their own whereby to arme themselves, as well as those who have not wherewith of their own to arme themselves. Which last Clause concerning the Arming of those who are able of Body, but not in Estate (being such as are by Vs before reckoned amongst the third sort of Our Subjects) is wholly omitted in this Commission, as it now stands corrected in 5. *H.* 4.

2. The Copy, as concerning the assessing, and distraining of all those who are able in their Estates, but not in their Bodies, goes therein thus. *Ad inveniend. juxta quantitatem terrarum & bonorum suorum, & prout rationabiliter portare poterunt, salvo statu suo, armaturas hominibus ad arma, & hominibus armatis, & arcus & sagittas sagittariis sic arraiatis & triatis, qui non habent armaturas arcus & sagittas de suo proprio, nec unde armaturas arcus & sagittas emere & providere poterunt, & ad conservand. expensis eorumdem illorum qui sic laborabunt pro defensione dicti Regni nostri, tam infra dictum Com. nostrum quàm extra, quandocunque indiguerit; Ita quod illi qui morabuntur &c.* For the finding of Arms according to the quantity of their Lands and Goods, and as they may reasonably beare, saving their degree, for men at Arms, and men Armed; and Bows and Arrowes for Archers so Arrayed, and trained, which have not Arms, Bows and Arrows of their own, nor have wherewith they can buy and provide Arms, Bows and Arrowes: and to contribute to the expences of all those which shall so labour for the defence of Our said Kingdome, as well within that Our County as without, whensoever there shall be need. All which, as may appeare upon the comparing, is much beyond that Commission of 5. *H.* 4. as it was entred after the Correction.

Vpon these proceedings in 5. *H.* 4. the corrected Copy being presented to the King, with a Prayer by the Commons; *That from thenceforth forward, no Commission of Array, should issue otherwise, nor in other words, then was contained in the Copie so corrected, &c.* An Act was thereupon, made by the Kings Royall assent thereunto, by the advice of the Lords.

And thus upon the whole Record it is cleare, That in the literall Sense the Commission is fully enacted in the whole; and We doe not observe that to bee denied in their Declaration. And the Art of the Penner seems to be spent onely concerning the intent of the Parliament in labouring to prove, That the Commons meant nothing in the Act,

but the taking away the penall clauses and words concerning the Commissioners. And the Argument is drawn onely from the end of the Statute, which the Declaration saith was only for the security of the Commissioners: And this the Penner goes about to prove 1. First, From the Complaint, as being no more; Secondly, From their amendment of the Copy, as being onely concerning the Commissioners; Thirdly from the Prayer, being to the same purpose; fourthly, Out of the occasion as supposing the Act necessary on the part of the Commissioners, not on the part of the persons to be commanded. Lastly, out of the subsequent practice of issuing Commissions, that there never were but one agreeable with the Copie so corrected.

And herein, to justifie this Our sense on this Act of Parliament of 5. H. 4. and withall to shew the Errours and mistakes of the Declaration in the frame of the Argument to the contrary; the state of the Case stands thus briefly:

The Commissioners complained but against the Penall Clauses upon the Commissioners (which We agree) at first; but afterwards, the King left them at libertie to correct the whole, as they pleased. And now they alter their mind, and do not rest in correction of those Penall Clauses upon the Commissioners, according to their first desire, but (as it is plaine upon the compare of the Copie, as it was corrected, with the Commission formerly issued, the not observing whereof was the great mistake that doubtlesse now mis-led Our two houses) the Commons likewise (as wise men who would not waive the advantage of a proffered favour from the King did correct the Commission also in the Powers of execution over the persons to be commanded: And thereupon the corrected Copy being presented, and the Commons expecting that even presently (for there was then occasion) and often afterwards Commissions of Array would (as they did in truth) issue forth, did pray not onely for the Indemnity of the Commissioners, which had been indeed but answerable to the first complaint; But in the first place, they made their Prayer in these Words, *That from thenceforth forward, no Commission of Array should issue otherwise, nor in other Words then is contained in the said Copie* (so corrected.)

This now being apparently the true state of the whole case (cleared from all mistakes) we think it so plain, that it requireth no further Argument to manifest, That the intention of the Parliament, was both to settle the Clauses, concerning the Powers of execution, and the Clauses concerning the Commissioners. Thus when We passe over to the Answer of the Objections.

First then, for the first pretence, That the Complaint was solely on the behalf of the Commissioners, We agree it to be true, and perhaps the Commons had no further thought at the beginning, nor till after an occasion given by the offer of the Liberty for a Totall reformation; but then they might desire an alteration accordingly.

For the second pretence (which destroyed, makes an end of the question) That the Commons made no amendment in the Powers of execution over the persons to be commanded; It is apparently mistaken, as appears by the particular instances before mentioned.

For the third pretence of the Prayer, (which came not till after the Commission was in all points so as before corrected) That the Commons did not desire any amend-

ment or Declaration concerning the Powers of execution, that is also mistaken; For having made those severall amendments, in the very first place (before any particular desired on the behalf of the Commissioners) their Prayer is as generall as their amendments, *That from thenceforth forward, No Commission should issue otherwise, nor in other words, then is contained in the said Copie.*

For the fourth pretence, That it was unnecessary to take care of the persons to be commanded, because that the Powers of execution over them were against 1. *E.* 3. *cap.* 15. 25. *E.* 3. *cap.* 8. & 4. *H.* 4. *cap.* 13 and that the Commissions of that kind, were then so lately damned in 4. *H.* 4. We Answer, That if it were so, there was the more necessity for them to complain, as we have shewed before. But in this also, though it be needlesse, We shall herein further clear Our Commission from those Statutes.

As for the occasion of relief for the Commissioners more then for the persons to be commanded. We say, the Commons could not but know, that there was no more occasion for the one, then for the other: For the same Law of 4. *H.* 4. if it had (as is pretended by the Declaration) expresly damned the Commission as unlawfull in the Powers, that (without more) had apparently, to every common Judgement, sufficiently secured the Commissioners against all refusals; And in truth, the persons to be commanded, being most of them of the lower sort, had more reason to fear the Commissioners, then the Commissioners, being men of Power, had to feare any trouble by Fine, Imprisonment, or otherwise, from any of the Courts above, especially in a time when Parliaments were so frequent

For the last pretence of contrary practice, Our Answer is, First, We deny this (which the Declaration affirms) That though many Commissions of Array did issue out after 5. *H.* 4. yet none of them did agree with it in words and matter: For We say, That divers Commissions were the very same saving in those things which were necessarily, and as of course, to be changed, as (amongst others) may be seen in the after-times of *King Henry* the fourth, See Pat. 7. H. 4. part. 2 m. 31. Dors. Par. 11. H. 4 part. 2. m. 24. Dors.

And as unto the pretended contrary practice, We agree, that it is true, Divers Commissions of Array did issue out, which do vary from this Statute of 5. *H.* 4. yet We deny that they must be therefor contrary to it; For (howsoever upon the Commission of 5. *H.* 4. as it was corrected in the several Clauses in such manner as before) it is enacted that from thenceforth forward no Commission should issue our otherwise then is contained in that Copie, yet it is most evident, notwithstanding, that the meaning of the Law could never be to tye the King to the very words of that Copie; For then at all times the Commissions must have begun with *Rex &c.* and not *Carolus* or *Regina*, and ended with the same *Teste* for Time and Place, and just the same *preamble* of danger, be it true or false (whatsoever other occasion had been) must have been meant to be expressed; All which are absurd. And in this, as in all Acts of Parliament, as well as in Wills, the intent clearly and necessarily appearing out of the Act it self, is the Law, which in this case was not so much to tye to the very identicall words, as *That the King should not issue out any Commission of Array which should exceed this which was so settled by any further penalty on the Commissioners, nor in the par-*

ons of execution upon the persons to be commanded; which sense appears in this, that in such a case it could never have been meant, That the Powers of execution of the Commission, being severall, as to Array, Assesse, Arm, Train, Muster, and Conduct, and all these not necessary on all occasions, nor all alwayes equally fit to be entrusted to the same persons, That the King should be bound at all times unnecessarily to command the execution of them all, and equally to entrust the same persons with them all, as he must have done in case the Act had been literally to be expounded in each tittle.

The truth is, many Commissions did vary, yet still were warranted, as not exceeding that of 5. H. 4. in the powers. As sometimes granting but part of them when there was no cause to use all; as also, some varied on the occasion, as sometimes providing against an invasion, in this or that part onely, sometimes more generall throughout the Kingdome: And lastly, it is true that some were upon occasion of rebellion, for which there is as much cause as against a forraign enemy, for those Commissions are not against 5. H. 4. which was a president, onely for the power of execution of Commissions of Array (whatsoever might be the necessary occasion to issue them.) And as this particular Commission sent forth in 5. H. 4. and thus after corrected, was on the occasion of the fear of the *French*, and therfore was upon that accident made onely as against an Enemy; so if according to former practice the like had then issued in case of Rebellion (in which case perhaps Rebellion had been mentioned as the cause) then the suppression of Rebellion might have been inserted in this president, and then the Argument might have been at this day used as well against the warrantablenesse of this Commission in case of Invasion.

And as to the president of a Commission of Array in 6. H. 4. cited in the Declaration as not agreeing with that of 5. H. 4. neither in words or matter, Wee conceive it is in substance warranted by it: For there the King (upon occasion of the *French* being in *Picardy*, ready to besiege some of his Forts there, and hearing that they intended to come to aide the *Welch*, being then in Rebellion) sends out his Commissions into *Kent*, *Somerset*, and other Counties, to Array, Train, and Arme the Inhabitants there, to the end they may be ready, as well *at the Sea-Coast as elsewhere, where and as often as there shall bee necessity for the expelling, vanquishing, and destroying of those enemies when there shall bee imminent Danger, as in such a case had beene accustomed.* But hee thinkes not fit to give to them the power of conducting them (which is in the Commission of 5. H. 4.)

But shortly after, upon information of an intention of the *Welch* to enter into *England*, a Commission issues to Sir *Thomas Barkley*, touching some of these Counties and others, not to Array and Arme the Inhabitants, for that was done before, but *ad supervidendum*, to see that they were sufficiently Arrayed, according to their estates; and to lead them, as often as it should bee needfull for resistance of the Rebels.

So that as Wee conceive, the Powers which were put together in 5. H. 4. are here severed, but there is nothing in either Commission which exceeds or crosses the Powers setled by the Commission of 5. H. 4. Though if it did, it might prove the illegality of those, but nothing against the legality of Our Commissions.

And if other particular Commissions had bin produced, and the differences particularly observed, Wee should have bin the better able to have applyed Our Answer thereunto; And in the mean time, We look upon all such Commissions, as regulated and warranted by this Act of 5 *H.*4. and in pursuance thereof.

Notwithstanding, if some Commissions can be produced, which are not warranted by 5 *H.*4. Yet that will be no sufficient Argument to prove, That this of 5 *H.*4. never meant to settle the powers of Execution, for there is no doubt, but in so long a processe of time, as since 5 *H.*4. there may have bin some deviations contrary unto the Act, the same having not at all times bin remembred; as perhaps also may be in the Clauses concerning the Commissioners which yet Wee are sure Our two Houses will not allow as an Argument against the force of 5 *H.*4. as allowing it to be an Act concerning them.

We might further adde the opinion of *Edward Cooke*, (whose great learning and affection to the Rights, and Liberty of the Subject are not unknown) who in his Treatise of the Jurisdiction of Courts (being one of those Books since this Parliament desired, or directed by the House of Commons to be published) expressly declares, That this Act, touching a Commission for Arraying and Mustering of Men, is at this day of force. *Jurisdiction of Courts, cap. Court of Chevalry.*

But if any man be yet unsatisfied with so cleer Reasons on Our Part, and in Our Answers, We shall conclude upon him with the authority of the whole Parliament of 7 *H.*4. *Roi. Parl. n.* 36. within two yeeres after this Our Commission was setled, when probably many of the same persons were Members of both the Parliaments: Whereby it appears that this Act of 5 *H.*4 is so binding as *unto all the Powers of execution over the persons to be commanded*, that the Clergy (who in former times had used to be Arrayed amongst themselves by Writ or Commission to the Bishop or Archbishop) were bound, as within the body of that Commission so setled by Parliament. And they, thereupon, in that very Parliament of 7 *H.*4. are excepted out of this very Commission of 5 *H.*4. which is therein mentioned, and it was then enacted, *That from thenceforth the Clergie be not any ways charged amongst the Laity for the making of any such Array, nor for any Contribution amongst the Laity for the same.*

Having thus cleerly setled this Record of 5 *H.*4. as a full Act of Parliament, as well concerning the Powers of Execution over the Persons to be commanded, as the taking away of the Penall Clauses over the Commissioners, there is no further necessity, as to the matter in question, to consider whether or no that this Commission in all or any part thereof be contrary to any of the former Acts of 13 *E.*1. 1 *Ed.*3 *cap.*5. 25 *Ed.*3. *cap.*8. & 4 *H.*4. *cap.*13. so much insisted upon in the Declaration. For that in such case, the Act of 5 H.4. being the latter had been a Repeal of them for so much.

Nevertheless, for the further satisfaction of Our people (as being desirous to omit nothing which may be done on Our part for the cleering of the justice of Our Actions) We shall also examine those Statutes so far as they are made use of in this Declaration.

And therein We professe the difficulty hath been more to finde out then to answer the inference made upon these Statutes. For the Declaration reciteth the Statute of 13 *Ed.*1. to be a particular Assise (or Assessement) of Arms, both in respect of the

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Kind of Arms to be found, and the *proportion of the estate* of every man, after which they are to be found, downwards from fifteen pounds in Lands and forty marks in Goods: And reciteth the Statute of 1 E.3. *That no man from thenceforth shall be charged to arm himself otherwise then he was wont in the time of the Kings Progenitours; and that no man be compelled to go out of his Shire, but where necessity requireth, and sudden comming of strange enemies into the Realm.* (Whereupon it is taken for granted, That the Statute of 13 *Ed.*1 was a provision of Arms for defence extraordinary, and that this Statute of 1 *E.*3. was meant with reference thereunto.) And also reciteth the Statute of the 25 yeer of *E.*3. (as to be to the same effect with the former) against *the constraining of men to find men of Arms, Hoblers, or Archers, without consent and grant made in Parliament*; And lastly, reciteth the Statute of 4 H.4. (which confirmes those two Statutes of 1 *E.*3. and 25 *E.*3.) And immediatly thereupon makes this conclusion which follows; *That by these Acts* (not distinctly applying the severall matters to the severall Statutes) *it cleerly appears, That the King could not by the Law, give power to impose Arms upon the Subjects* (which the Declaration calleth sometimes finding of Arms, sometimes finding men at Arms, all of different senses) *or to compell them to be drawn out of their Counties:* Which afterwards, in Stating the Case, is expressed thus, *That the Subject was not compellable to finde any other Armes then was declared by those Statutes, or to go out of their County, but in case of Actuall Invasion by Forraign enemies.* Against which this Commission is said to be.

But for our cleerer passage in this businesse, We shall single out the severall Statutes, with the Objections (as We conceive) intended upon each of them.

For the better understanding whereof We shall distinguish of the principall Terms in this question used in the Commission and severall Acts of Parliament.

First then, as for the words of *Arming a mans selfe* used in the Commission (as also in the Act of 1 *E.*3.) they are literally to be taken for the *providing of Arms for a mans own person*, wherewith he is to serve as a Souldier, either Horsman or Footman, of what kind soever; And the *finding of Arms for others* in the Commission, is but the finding the *bare Arms*, without providing the men, and are so to be taken here, (in whatsoever sense they may be taken elswhere) as may cleerly appeare upon the very reading. And as for the words, (*finding of men of Arms, &c.*) which are the words used in the Statute 25 *E.*3, they are ususally and properly enough taken for the setting forth of Souldiers, the paying of their wages, or contributing towards either of them.

This then being the sense of the words We now proceed to the Statutes: And apply them to the two Objections, the one against imposing Arms, the other against carrying out of the County. And first concerning the Statute of 13 *E.*1.

Thereupon the Objection against the Power of imposing of Arms is this.

This Statute appoints a particular Assize for the Kinds of Arms and Proportions, as before. But our Commission doth give power to assesse for the kinds, *any Arms*, and for the proportions *according to each mans abilitie*, which the Declaration terms to be *without limitation* and *at pleasure*) and so is contrary to this Statute.

To this We Answer; That that Statute of 13 *E.*1. (besides that it is but an Affirmative Statute) was made onely for the *ordinary* defence of the Kingdom, for the, *pre-*

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servation of the peace at ordinary times; and was not intended as a provision of Arms for *defence extraordinary*: but that for the publick defence in time of Danger, the King might, and must charge other Arms, and other proportions, according to the exigency of the occasion.

Both which appear together, if We consider that the provision in that Statute mentioned (which might be of use for the Peace) is very insufficient for the Service of VVarre: For VVe cannot but observe the pettinesse of the Arms, even according to the use of that time, for he that was rated highest by that Act, was to find but a *Hawberg* (which in that place signifies a Gorget) *a breast-plate of Iron, a Sword, a Knife*, and *a Horse*: and others but *Gisarms* (which were Pikestaves) *Knives*, and other lesse weapons. And yet at that time there were *men* at *Arms*, which were Horsmen of compleat Armour, *Hoblers*, which were Light-horse, and there were *Pikes*, *Launces*, *Pole-axes*, and other weapons commonly used for war.

And no lesse considerable is it to this purpose, That for the charge of this defence no man of what estate soever, is by this Act charged above the rate of fifteene *pounds in Lands*, or forty *marks in Goods*, and hee that hath fifteene pounds in Land, or forty marks in Goods is charged as high as the greatest: which is not to be imagined in case of provision for defence extraordinary.

And to cleer this further out of this, and other Acts; it is plain, that this very Act expresseth it selfe in these words, *That every man have in his house harnesse for to keep the peace*: and appoints those who are thereby assessed to pursue Hues and Cryes after Thieves and Robbers, (which went in those times with great strength, and in multitudes *with their Horses and Armour*. And the old Articles of inquiry upon that Statute being made in the same Kings Reigne (and to be seen in the Statute-books) tend onely to inquiry touching the keeping the peace; as whether all men betwixt the age of fifteene and sixty be sworne to keep the peace, and whether they have weapons in their houses according to the quantity of their Lands and Goods for *conservation of the peace*, according to the Statute. (And the Statute of 2 *E.*3. *cap.*6. renews this Statute of 13 *E.*1. in these words: *Item, As to the keeping of the peace in time to come, it is ordained and enacted, That the Statutes made in time past, with the Statute of* Winchester, *shall be observed and kept in every point*. And strange it were to imagine, that the wisdom of a Parliament, in the matter of arming the Subject, made no greater or better provision against an *Enemy*, then against a *Theife* or a *Rogue*. And it is not so proper to charge the Subject at all times in the same manner and proportions as in times of danger.

And lastly, for further cleering this Our exposition of that Statute of 13 *E.*1. wee say, That although (as Wee have already shewed) the Commissions of Arrays did from the time of making the Statute of 13 *E.*1. frequently issue both before and since the Statute of 5 *H.*4. yet none of those Commissions were regulated by the Statute of 13 *E.*1. but either they were (as commonly) for arming them according to their degree and abilities, without mentioning the Statute of 13 *E.*1. Or, where any did expresse the quality and proportion of Armes to be found, They varied from the Statute

ned the eſtates of thoſe who were to find Armes, otherwiſe then is mentioned tute of 13 *E.*1. and appointed other kind of Arms, and differenced and proportio- in that Statute: And ſometimes with an expreſſe Declaration, that the Statute of 13 *E.*1. was made for the conſervation of the peace in a time of peace, when there was no danger of a forreigne enemy. And though ſome uſe might be made of thoſe Arms appointed by that Satute in time of danger, as well as any other weapons: yet the ſame was not that kinde of Armour which was principally intended as fitting for ſuch defence; as may appear by the preſidents above cited. And the conſtant practice in all after-ages for defence extraordinary hath ever been with other Arms, and after other Proportions, as VVe believe will not be denied by any man.

VVee now come to the Statute of 1 *E.* 3. whereupon the Objection ſtands thus:

That the Statute of 13 *E.*1. having made ſuch particular aſſize of Arms (as before) for the kindes and proportions, this Statute doth ordain, That no man from thenceforth ſhall be charged to arm himſelf otherwiſe then hee was wont in the time of the Kings Progenitours: Meaning (as the Declaration takes it for granted) according to that former Statute of 13 *E.*1.

To this VVee ſhall give this Anſwer: That (as Wee have proved before) 13 *E.*1. was never meant as of a proviſion for defence extraordinary: and much leſſe that the Statute of 1 *E.*3. could intend any ſuch thing.

And as the Penner of the Declaration cannot there in ſhew any expreſſe reference that Statute of 13 *E.*1, and can, at the moſt, but barely conjecture it; ſo on the other ſide. Wee ſhall out of the penning and otherwiſe upon ſurer grounds conclude the contrary. For firſt, in this caſe, regularly, if not neceſſarily, (where a latter Statute in the ſubſtance and meaning thereof wholly depends upon a former, and muſt have reference thereunto) the Parliament of 1 *E.*3. would have made mention of this
a. *E.*3.c.6 Statute of 13. *E.*1. (as they did thereof) the next yeere following, when it was renewed but for keeping of the peace. Next, in wiſdom it was fitting (if ſo be that they had intended a further re-eſtabliſhment of the particularities of the kinds and proportions of Arms mentioned in 13 *E.*1.) that when they had a former Statute ſo punctuall therein, they ſhould not have thus left us, for a true underſtanding of their meaning, to a generall enquiry of the particular Aſſize uſed for Armes in former times.

But on the contrary, the Statute referring to the former uſage, in the times of the Kings Progenitors (which being indefinitely ſpoken, VVee conceive, muſt be underſtood of all Kings times as well before as after 13 E.1.) the uſage therein meant is but *Conſuetudo Angliæ*, the Common Law: and the Parliament could not in all probability, in the mention of ſo ancient an uſage intend ſo late a Statute as this of 13 E.1, which was but new in the particularity of the Aſſize, though ancient in the Rule of charging, according to the quantities of every mans Lands and Goods, the former Aſſizes having beene alſo different: Nor Nor (conſidering that of Neceſſity, the ſeverall kindes and proportions of arms ever did, and muſt vary with the times) could they intend, that there ever was,

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for the times paſt, or could be for time to come any ſuch conſtant rule of any ſuch particular Aſſize concerning arms, whereunto they could referre, as conſtantly uſed for the time paſt, or that might conſtantly endure for time to come: neither ever was, Law or can there bee any other conſtant rule, then that Generall rule of the common (which can never faile) for the aſſeſſing Armes from time to time, for the kindes, according to the preſent uſe, and for proportions, according to mens abilities.

And it were very ſtrange, that the Parliament of 1. *E.* 3. could conceive, That for the defence extraordinary) the particular kinds of armes in 13. *E.* 1. Eſpecially ſuch petty proviſions, could bee proper and ſufficient at this time in 1. *E.* 3. and would ſo continue afterwards.

And now that We have cleared this firſt part of the Statute of 1. *E.* 3. *as concerning the Arming a mans ſelfe)* that it is not thereby intended, That the Subject ſhould not be charged with Armes, otherwiſe then according to the Statute of 13. *E.* 1. We ſhall deliver, what our ſelves conceive of the meaning thereof; And it is thus.

Towards the end of the Reigne of *E.* 2. ſeverall Commiſſions of Array iſſued into ſeverall Counties; in execution whereof the Commiſſioners had much grieved, and oppreſſed the Subjects. Inſomuch, that upon complaint, ſpeciall Commiſſions of Oyer and Terminer (uſuall in thoſe times) were ſent forth for the enquiry after thoſe grievances and oppreſſions. And although it doe not appeare what thoſe were, yet ſince the complaint was not againſt the Commiſſions themſelves, as illegall, Wee cannot conceive otherwiſe, but that it was againſt the wilfull exceſſe of the Commiſſioners, in their ſurcharging the Subjects with arms beyond their abilities of eſtate to beare (as charging a man as a Horſman, where it had beene ſufficient for his eſtate to have borne Armes as a footman, and he like) contrary to the Tenour of the Commiſſion. *cl. 19. E. 1. n. 17. Dor.*

But this courſe producing indeed little effect, in the time of King *E.* 2. partly out of the favour, which it is likely the Commiſsioners did finde, and partly by reaſon of the ſhort remainder of his reigne, there was juſt occaſion, both for complaint, and reliefe in this next Parliament of 1. *E.* 3. and though the particulars of the petition in 1. *E.* and the anſwer out of which (according to the manner of thoſe times) the printed Act was made, do not appeare, for the want of the Roll of that Parliament, yet we may well judg thereof upon this occaſion, happening within the compaſſe of about one yeare before, and thereupon conclude, (as for the true meaning of that Act) that the proviſion intended to be made, was only againſt the exceſſe of the Commiſſioners; which rather juſtifies, then any way diſproves the lawfulneſſe of ſuch commiſsion. And ſo the ſence of the Act, appliable to the complaint, will bee, That whereas the Commiſsioners had over highly taxed the Subjects, the Act provided, that they ſhould not be otherwiſe charged, then as they had been in the times of former Kings; and (according to Our Commiſsion) moderately, and ſo as they might live ſtill according to their former condition: as in like caſe of other Statutes againſt outragious Diſtreſſes and amerciaments.

And although Wee take this to be the ſenſe of that Statute, yet if any man ſhall

thinke this part of the Statute of 1. *E.* 3. *Concerning arming a mans ſelfe*, to be the ſame with the words of the Statute of 25. *E.* 3. againſt *conſtraining any man to find men of Armes, &c.* (which is the ſenſe of this Declaration, which makes both Statutes to be *to the ſame effect*, and makes the inference againſt our power of impoſing Armes upon them both) We ſhall not contradict him therein, being confident to make it evident, that this Commiſsion is no way contrary to the words or meaning of that Statute of 25. *E.* 3.

But before we come to that Statute, We ſhall make one obſervation upon thoſe Statutes of 13. *E.* 1. & 1. *E.* 3. both together: and thereupon ſhew, That in the judgment of the whole Parliament of 4. *H.* 4. (whoſe authority is chiefly inſiſted upon in this Declaration) our Commiſsion is no way oppoſed by either of thoſe ſtatutes: And it is this:

It appeareth that the late iſſuing of the Commiſsioners complained of in 4. *H.* 4. (which the Declaration ſuppoſeth were of the ſame nature with our Commiſsion, but Wee deny it) was the occaſion of the Petition of the Commons in that Parliament. In which Petition, they intending to ſhew the illegality of thoſe Commiſsions and to obtaine a confirmation of former Acts to the contrary, do recite the ſtatute of 25. *E.* 3. 18. *E.* 3. *c.* 8 and that part of the ſtat. of 13. *E.* 3. which is againſt carrying of men out of their Counties; and yet nevertheleſſe they wholly omit this Statute of 13. *E.* 1. and this firſt part of the ſtat. of 1. *E.* 3. concerning the arming. Whereas it is to be preſumed, they would have alſo recited this Statute of 13. *E.* 1 if they had conceived the ſame to be (as this Declaration ſets it forth) the certain Aſsize for Armes, and ſuch a Statute whereto all the reſt had reference, or any way materiall againſt any part of theſe Commiſsions. But howſoever, making uſe of the latter part of the Act of 1. *E.* 3. againſt carrying of the Subject out of the County, they would have made uſe alſo of this part of 1. *E.* 3. concerning the Arming, and deſired a confirmation thereof as well as of the reſidue, and not thus purpoſely rejected it, if ſo bee they had not, upon conſideration, firſt reſolved that that part of 1. *E.* 3. was no wayes againſt the Commiſsion.

And now we come to the ſtat. of 25. *E.* 3. whereupon the objection ſtands thus:

By the Statute of 25. *E.* 3. the Subject is not to be conſtrained to *finde men at Armes, &c.* if it be not by common conſent and grant made in Parliament. But by this Commiſsion the Commiſsioners have power, without conſent or grant in Parliament, to command thoſe who are able of body and eſtate *to arme themſelves*: and thoſe who are impotent, but able in eſtate, to *finde Armes* for others: (which the Declaration in ſome places calls *finding Arms*, and in ſome places *finding men at Arms*) and is therefore againſt that Statute.

For this objection Wee need doe no more then refer Our ſelves to our former obſervation of the different ſenſe of the ſeverall words of *arming a mans ſelfe*, and *finding Armes* for ſome other, which are the onely words uſed in the commands of this Commiſsion, and the words, finding of a *man of Arms*, or other compleat Souldier, uſed in this Statute, and intended to be thereby prohibited: whereby it will be apparent, that arming a mans ſelfe, or finding bare Armes for others is not within the letter of this Statute.

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Nevertheleſſe, for a more particular anſwer; 1. As to the firſt of theſe powers in our Commiſſion concerning *arming a mans ſelfe*, We ſay, that this Act being againſt finding of men at armes or other Souldiers, doth not any wayes intend to prohibit the compelling of men to *arme themſelves* (that is, their own perſons.)

For that had beene not only againſt the Common Law, whereof that Act is but declarative, but alſo againſt thoſe Statutes of 13 *E.* 1 (admitting it provided, as the Declaration ſuppoſeth, for defence extraordinarie) and againſt 1. *E.* 3. by both which Statutes it doth clearely appeare, that the Subject is in ſome manner compellable to arme himſelfe: And the Act of 25 *E.* 3. is in generall againſt all finding of men armed at any time. So that in that ſenſe whatſoever the occaſion is (though it be upon an actuall invaſion of an enemy) he cannot be compelled to find arms. And that expoſition of the Statute would wholly take away all compulſory meanes of defence.

Nor will it be ſufficient to anſwer this, That the arming according to thoſe Statutes is aſſented unto in Parliament, and ſo is within the exception of the Statute of 25 *E.* 3. For the conſent in Parliament (intended by this exception) muſt be underſtood of *future* conſent in Parliament, as well as the conſtraining men to finde Souldiers prohibited by the Act is meant of a *future finding* Souldiers. And in the exception of the Statute of 25. *E.* 3. There is not only to be a conſent, but alſo a *grant* in Parliament, for ſo the words are (*if it bee not by common conſent and grant in Parliament*) but in thoſe Acts of 13. *E.* 1. & 1. *E.* 3. there is no colour of a grant made at all. And this Statute being declaratory of the Common Law, as appeares by the reaſon of the Act delivered in the Petition of the Commons in theſe words, *Car cet eſt encountre le droit del Realme.* For it is againſt the right of the Realme, (which is as much as againſt the fundamentall liberty of the Subject) this Statute of 25. *E.* 3. muſt bee conſtrued as of the common Law, and before any Statute.

And ſecondly, as for the other part of Our Commiſſion, which is concerning the charging thoſe who are impotent in body, but able in eſtate, to finde Arms for others: If ſuch finding of bare Armes had been within the letter of that Statute, or the finding of a compleat Souldier by ſuch a man, had beene within Our Commiſſion; yet it would have beene a harſh conſtruction, (and doubtleſſe contrary to the intention of the makers) by generall words, which were meant only for proviſion in the generall Caſe, thus to have ſpared him in this ſpecial and particular caſe of impotency, from contributing to the defence of the kingdom, by finding another, as in his place; whileſt he is as much, or more concerned then others, who muſt undergoe as much charge, and muſt alſo adventure their owne perſons.

And by the Common Law, whereof (as we have ſaid) this Statute is but declarative, thoſe who were not fit to beare Armes, were notwithſtanding chargeable otherwiſe towards home-defence, as appeares by the Preſidents already cited, and many more.

And now Wee ſhall give the true ſenſe of this Statute of 25. *E.* 3. And this will beſt appeare upon the end and occaſion of the making; which were theſe.

V. 18. E. 3. Rot. Parl. n. 11. 20. E. 3. Rot. Parl. n. 12. and others of that time.

King. *E.* 3. having had his Treasure exhausted by the French Warr, was upon that occasion inforced to many hard pressures upon his Subjects; So that they had severall times beene charged, with providing and setting forth of Souldiers; and sometimes with maintaining or paying of them: and this in so excessive a manner, as that it cost a Countie somtimes at once a thousand pound; And all this was done with relation only to a forein Warre, wherein the title of the King to *France* was only in question: and nothing which directly concerned the Kingdome of *England:* against these there was just cause to make provision by some Law, especially now when the Wars were renewing: And accordingly this statute was made against imposing such charges upon the subjects.

And what resemblance there is betweene those cases, and our case of charging the subjects onely to finde Arms for themselves, or (in case of impotency) for another (as in their stead) and all but for home-defence, we referre to every mans judgment.

And thus wee leave these three Statutes of 13. *E.* 1. 1. *E.* 3. and 25. *E.* 3. with this observation, that if it bee true, (which the Declaration takes for granted) that they are all to the same effect, that then our Answer to any of these three is an answer to the rest.

Wee are now come to 4. *H.* 4. being the last of these Statutes, which (in the matter of Arming) are objected against our Commission, as it stood at common law, before 5. *H.* 4.

And herein We agree, that the Parliament Roll, whereupon the statute is framed, is truly set forth in the Declaration: yet we conceive that, in substance, there is no more upon the roll, then in the Print; though some passages may give some light for the exposition of these other statutes of 1. *E.* 3. and 25. *E.* 3. therein confirmed.

So as this stat: of 4. *H.* 4. being in truth, but an Act, of bare confirmation, without any additionall explanation, is already answered.

But because the Declaration doth import, That the Commissions (which issued lately before 4. *H.* 4. and were the occasion of that statute, and are damned thereby, as contrary to the Acts of 1 *E.* 3. 18. *E.* 3. and 25. *E.* 3.) were of the nature of our Commission, (which yet is not indeavoured to bee proved) We shall also give a particular answer touching those Commissions.

And herein we say, that first it doth not appeare, nor is there any reason to presume that any of those Commissions were of the Tenour of ours; And in case those Commissions did, amongst other Powers containe also the Powers of our Commission, touching the imposing armes upon the Subject, it doth not appeare that those Commissions were particularly in those very powers held unlawfull. Both which must (out neither will) be proved, otherwise there can be no application.

But the truth is apparently to be inferred out of the Roll, that upon those Commissions the Subjects were inforced to go or to find others to go at their own charges, not only out of their proper Counties, but also (upon occasion of some insurrections into *Wales*, which at that time and (untill the Act of Vnion 27. *H.* 8.) was to

some

some purposes, at least commonly reputed a distinct dominion; as appeares even by this Parliament Roll, in these words, that none of the said Commons be distrained to goe into *Wales or elsewhere out of the Realme*, and otherwise: the usuall phrase in severall Acts of Parliament, being also to this day, the Kingdome of *England*, and Dominion of *Wales*.) And such a Commission, We may well admit to be against all those three statutes, without impeachment of ours.

9. H. 4. R. Parlm. n 17
6. H. 4. R. Parlm. n. 9.
1. H. 5. R. Parl. n. 17.
2. H. 4. c. 20.

Wee shall say no more as to this statute single, but that (as wee have observed before) both in the Parliament Roll, and printed Act, the first clause of 1. *E.* 3. concerning arming, being purposely omitted, it sheweth that the meere matter of causing the subject to bee armed, was not the grievance then complained of, or meant to bee redressed.

Having thus farre proceeded in Our particular answers unto the severall Statutes of 13. *E.* 1. 1. *E.* 3. 25. *E.* 3. and 4. *H.* 4. as they were applyable to the first objection made upon them, against our imposing of Armes upon the Subject; Wee shall in the next place, proceed to the answer of the other objection, made against our Commission, upon the statutes of 1. *E.* 3. and 4. *H.* 4. of confirmation: (For as to the other statutes of 13. *E.* 1. and 25. *E.* 3. Wee doe not conceive, that they are or can be meant unto this purpose.) Hereupon the objection is this;

That by the statute of 1. *E.* 3. and 4. *H.* 4. the Subject is not compellable to go out of his County; but in case of the sudden comming of an Enemy, which the Declaration interprets of an actuall invasion: but this Commission gives power not onely to compell the subject to goe out of his county before an actuall invasion (as the case is put in the stating of it) but (as it is expresst in other parts of the Declaration) without limitation, and at pleasure.

To this objection our answer is; That both the sense of the statutes, and of the powers of our Commission are mistaken. For first, (as we have before stated it) our Commission gives that power of conducting out of the countie, onely against an enemy, and for the defence of the Country in case of imminent danger, and but when and where it shall bee most needfull; (And so not without limitation and at pleasure.)

And secondly, as to the sense of the statutes, We do deny that the subject is not compellable to go out of his County, unlesse in case of an actuall invasion, by a forein enemy.

And herein, though we have not upon this Commission necessary occasion to dispute it; yet we cannot but observe, That the Declaration allowes of no necessity of compelling the subject out of the proper countie, in case of actuall rebellion, and onely against a forein enemy, the ground whereof is a mistake (in recitall of the statute of 1. *E.* 3. by the Act of confirmation of 4. *H.* 4.) of the word *And* betwene the two words, *necessity* and *sudden comming*: The Act of 1. *E.* 3. going thus, That no man be distrained to go out of his countie but where necessity requireth *and* sudden comming of strange enemies into the Realme. And the Act of 4. *H.* 4. (which as we have before observed, reciteth not the whole Statute of 1. *E.* 3. but so much therof, as upon occasion of the late forein service did then concern the present complaint) being in these words, that none shall be distrained to go out of their county, but only for the cause of necessity (*of*) sudden comming of strange enemies into the Realme.

Whereas, if in this recitall the word (*And*) had been put in place of the word *Of*, or before it, both had agreed, and so the sence of the Statute, as to this matter of going out the County, had bin upon 4. *H.* 4. as it is upon 1. *E.* 3. *That no man be compelled to go out of the County, but in case of necessity or comming of enemies*: the word (*And*) in exposition of Statutes being

most frequently taken for (*Or*) according to the Subject matter, and so the Stat. had excepted two cases arising from within (by actuall rebellion) & necessity arising from abroad (by sudden comming of strange enemies:) this exception in both being absolutely necessary for defence of the Realm and according to the Common Law (of which the Statute is but declarative) and the practice both before and since. And indeed it could be no otherwise in property of speech, for there cannot be a cause of necessity *of* the sudden comming of enemies, but there is a necessity of defence *against* their comming. And in this case We are to be guided by the Statute of 1 *E.* 3. as it was Originally, as it is also truly set forth in the declaration, and agrees with all printed Statutes both in English and French, and ancient Manuscripts, all of them derived from the originall statute Rolls which was lost before. 4. *H.* 4. (that which now remains being but a Transcript of a Transcript.) Thus then, without more, wee shall apply Our selves to the objection as it is made upon the words of 1. *E.* 3. both in the Originall and the Recitall. And we say, that the Subject is compellable to go out of his County for defence of the kingdom, as necessity shall require, before the landing or other entry of the enemy, to prevent his landing or entry. And for this we shall but recite the words again; And they are these, *That no man bee compelled to go out of his County, but where necessity requireth, and sudden comming of strange enemies into the Realme.* Wherein it seemes to Vs most plaine, that these words require no such actuall landing, or entry of an Enemy into the Kingdome, before the Subject is compellable out of his County. For the words of the Act are not (as to this point) when the Enemy *is come*, but *upon the comming*, not *within* the Realme, but *into the Realme*. And all men know, that in ordinary Speech, a man may bee said to be comming into a place, when he is upon a remove to a place; but most properly, when he is on his way, especially when hee approacheth with an intention to enter thereinto; and in such sense these words of *comming into the Realm* must be taken, in this statute.

But in case the words (*of the enemies comming into the Realme*) might beare a doubtfull interpretation, that sense must be taken, which agrees with the common Law before practised, whereof this Act is but Declarative, and the constant practice of all ages since that, is, That the Subjects have ever been commanded, and gone out of the County against the enemy before any landing or entry.

And to give this Statute of 1. *E.* 3. any other sense were against all common reason, and the rules of government and defence; which is, not to let the enemy first come in, if it be possible to keep him out: and it may be much more easie to prevent the comming into the Land, (especially by Sea, in opposing the landing;) then afterwards to expell him. And it cannot be expected, that the Forces of one County alone, should be able to resist the entry of a powerfull enemy.

And lastly, as for those Commissions, wch were damned in 4. *H.* 4. those had no resemblance to our case, nor are warranted by the exception of 1. *E.* 3. For that (as appeares before, the Subject was then carried out of the Countie, not for defence of the kingdome, as the exception of this Stat. requires, but for suppression of an Insurrection in *Wales*, which was not then taken as part of the Realm: and the Prayer of the Commons in 4. *H.* 4. made upon that occasion, and therein grounded upon 1. *E.* 3. was not meerely because they were carried out of the Counties, but because they were carried out of the Realme in a service, which was not for the necessary defence thereof. Wee have thus far, upon this last head of our discourse, only answered the Objections made upon these Statutes of 13. *E.* 3. 14. *E.* 3. 25. *E.* 3. and 4. *H.* 4. We shall now conclude this part of our answer, with a returne of all those Statutes against the Declaration, and in justification of Our Commission. First, as concerning 13. *E.* 1. since that (as we have before observed) the Statute was made only with relation to the keeping of the peace, it implyes,

plies, that there is another rule in the matter of impoſing of Armes for defence extraordinary.

Secondly, as for 1 Ed.3. (beſides our former obſervation, that in all probability, the act was made but upon complaint againſt the exceſſe of charging by the Commiſſioners, and not againſt the powers of that Commiſſion, which had lately before iſſued, which rather juſtifies the Commiſſion then otherwiſe.) We further ſay, That if We ſhould admit, that the Statute of 1 Ed. 3. That no man ſhould be charged to arm himſelf, otherwiſe than he was wont in the time of the Kings progenitors, hath any relation unto 13. Ed. 1. and that ſo the ſence thereof were, that none ſhould be compelled to find armes, otherwiſe then according to that Statute of 13. Ed 1. Yet then that Statute of 1. Edward 3. (as it is plaine) muſt be meant only as concerning ordinary defence; and that as the Subject is in caſe of neceſſitie to be carried out of the Countie, ſo in that caſe he may be compelled to be armed otherwiſe then at ordinary times.

To this purpoſe we note, that in the ſtatute there are two diſtinct propoſitions joyned together one againſt the Arming of the Subject the other againſt going out of the Countie; and the clauſe, which is next ſubjoyned is an exception, **Si non pour cauſe de neceſſite, &c.** Vnleſſe it be for neceſſitie, and the ſudden comming of ſtrange enemies. Which exception upon ſuch admittance, is not only applyable to that laſt clauſe before, concerning the going out of the county, but as to the Arming: the ſence thereupon alſo being thus; that though in caſe of ordinary defence, the Subject be not compellable to beare other armes then according to 13 Edward 1. as neither to goe out of the proper Countie; yet for the extraordinary defence of the Kingdome, in caſe of neceſſitie wherein more muſt be done than ordinary) both, armes are to be impoſed by other rules than in 13. Ed. 1. and alſo the ſubjects are to goe out of the countie; for ſo it followeth in the next words of the Act, which are theſe, and then it ſhall bee done as hath beene uſed in times paſt, for defence of the realme. And this ſence upon this admittance, cleerely appeareth out of the courſe of former times in ſuch Caſes, to which the Statute doth referre.

As for 25. Ed. 3 (beſides that the Declaration ſaith, it is to the ſame effect with 1. Ed. 3. and was made with relation to a forraigne war, as We have obſerved,) if (as the Declaration muſt admit) that the exception of finding men at armes, &c. by common conſent and grant in Parliament, be intended as well of Acts of Parliament paſt as to come, then our Commiſſion, in the power of impoſing armes, being warranted by 1. Ed. 3. is alſo warranted by that Act of 25 Ed. 3.

And for 4. H. 4 (beſides what we have before obſerved, upon the omiſſion therein of the firſt part of 1. Ed. 3. concerning impoſing of armes, and that it applies 25. Ed. 3. but to a forraigne warr) the generall ſence, and judgement of that Parliament, excepting then only againſt other Commiſſions, ſeemes to allow of this; for that otherwiſe, it is not to be imagined, that immediately in the ſame yeare, there ſhould iſſue out a commiſſion of array, and in the next yeare, there ſhould iſſue out that other which was corrected in 5. H. 4. both of the ſame forme, and the latter bearing Teſte the day of the Summons of the Parliament of 5. H. 4. And that at that Parliament though ſome amendments were made in it, yet no exception ſhould bee taken, to the legalitie of the powers: whileſt (as the Declaration obſerves) it is probable, that many of the houſe of Commons, and it is certaine that moſt of the Houſe of Lords, were members of the Parliament of 4. H. 4. and knew the meaning thereof.

And thus we have anſwered to the full ſatisfaction (as we hope) of all indifferent judgements, the ſeverall objections made againſt the legalitie of our commiſſion of array as it ſtood before, and at the making of the act of 5 H. 4, and thereby proved, that our commiſſion was warranted by the common Law; that the powers thereof remain untouched by the ſtatutes of 1 Ed. 3. 25 Ed. 3 or 4 H. 4. And that it was afterwards allowed and ſetled) as a rule or patterne, whereby commiſſions ſhould iſſue in after ages) by the act of Parliament of 5 H. 4

We have yet ſome other objections in our way, which admitting the legalitie of our commiſſion as it ſtood in 5 H. 4 are made againſt it upon ſome latter acts.

The firſt in time is upon the ſtatute of 4 and 5 P. & M. c. 4 which ſettles an aſſize and proportion of men, horſes and armes, which every man was to find; which the Declaration ſaith, was without queſtion, a repeale of this Statute of 5 H. 4 And accordingly, Wee ſhall take that firſt into conſideration. For though upon the repeale of that ſtatute by 1 Iac. c. 25, the Declaration agrees, that our commiſſion, if once ſetled by 5 H. 4 is now againe in force, Yet an inference is made from thence

thence, that the Parliament 1 Iac. would never have repealed that ſtatute of 4 and 5 P & M. if they had thought that any ſuch power o impoſing Armes, as is in the Commiſſion, would have beene thereupon revived.

The words of the ſtatute of 4 and 5 P. & M. cap. 2 are theſe. Be it enacted, &c. That as much of all and every Act and Statute c oncerning only the keeping or finding of horſe, horſe s, or Armour or any of them heretofore m ade and provided, and all and every forfeiture or penaltie con cerning only the ſame, ſhall be from hence forth utterly, void, repealed, and of none e ffect.

To this We ſay, firſt, that 4. & 5. Phil. & Mar. doth not repeale 5. H. 4, either by the words or meaning.

As to the words, they extend only to a repeale of ſuch acts which doe appoint particular aſsizes (or Aſſeſſements) of Armes: all which upon that ſtatute of 4 and 5 P. & M. (which appoints a new Aſſize for kinde of armes and proportions) would be either contrary or altogether uſeleſſe. And to that purpoſe the ſtatute ſpeakes of repealing of acts, concerning keeping or finding of horſe horſes or armour, which, as it muſt be meant of acts concerning keeping or finding of horſes in particular for kinde or number; So as concerning (armour) in generall it muſt, by the conſtant rules of conſtruction of ſtatutes, be meant of acts of the like nature as the former, that is, Acts concerning the appointment of ſome particular armours, as a Gorget, a Breſt-plate, and the like, ſuch as were the ſtatute of 13 E. 1. and 33 H. 8.

By this ſtatute of 5 H. 4 is nothing concerning the appointment of any particulars, either for the kind of Arms or proportions: but doth only enact a commiſſion iſſuable, without commanding that it ſhall iſſue, which is referred to the Kings pleaſure (upon a lawfull occaſion) Nor doth the Commiſſion it ſelfe mention (as is apparent) any particularitie of armes or proportions.

And if the ſtatute of 4. and 5. P. & M. were meant of ſuch ſtatutes, as ſpeake of finding Armes in generall, it had as well repealed the ſtatutes of 1 E. 3. 25. E. 3. and 4 H. 4 as this act of 5 H. 4 which no man will ſay was ever intended.

But in truth, this Commiſſion being in generall, doth no wayes contrary this ſtatute of P. & M. but that the particulars of the aſſeſſement by that act, both for the ſeverall kindes of armes and proportions, might have beene very well put in execution by this Commiſſion.

For the Commiſſion gives power to aſſeſſe every man, juxta ſtatum & facultates, According to his degree and abilitie. And this parliament of 4 and 5 P. & M. appointing armes fitting for defence o the Kingdome in thoſe times, and proportions fitting (in their Iudgements for the ſeverall degrees and abilities of every man; That act did not thereby take away the power of the Commiſſioners wholly, but did only give particular rules for the kind of Armes and proportions, which the Commiſſioners were to obſerve in the execution of their power, thereby only regulating, but not deſtroying their powers.

And if this ſtatute of 4 and 5 P & M had taken away the firſt powers of the Commiſſioners concerning arming, yet had it not taken away the other ſeverall and independent powers of arraying, training, muſtering, or conducting thoſe men ſo furniſhed according to that ſtatute, but that they had remained to have beene executed (at leaſt by a diſtinct commiſſion which might have beene iſſued at pleaſure for that purpoſe.)

And this alſo appeares by the ſtatute of the ſame Parliament of 4 and 5. P. and M. cap. 3. (which is in force at this day) which being concerning muſtering, hath occaſion to mention, and doth expreſſe the old power ſtill remaining to iſſue commiſſions of that nature, in theſe words, That if any perſon that ſhall be commanded at any time hereafter, generally or eſpecially to muſter afore any ſuch who ſhall have authoritie or commandement for the ſame, by, or from the King or Queenes Majeſtie, or the heires or ſucceſſors of the Queenes Majeſtie, or by any Lieutenant, &c. do abſent himſelfe, or at his appearance doe not bring his beſt furniture or array and armes as he ſhall then have for his perſon in readineſſe ſhall be impriſoned, &c.

But neither by that nor the other ſtatute of Philip and Mary chapter ſecond, is there any new authoritie given to the King to grant commiſsions for Muſters, but the ſame is admitted to continue as not repealed And as to that point of appearing at muſters, we made uſe of that

that Declaration could imagine, VVe meant any such further use therein upon that Statute, as the Declaration sets forth.

And here by the way VVe observe a mention in this Statute of 4. & 5. P. & M. ca. 4. of a power of mustering in Lieutenants, to whom other Powers contained in Our Commission were also granted, and might have been also mentioned in this Statute, if there had been occasion.

And secondly, as to this Statute of 4. & 5. P. & M. c. 2. VVe say, That in case that Act of 5. H. 4. had been repealed by 4. & 5. P. & M. yet this Commission had still continued in force notwithstanding any bare repeal; for that (as VVe have proved) this Commission (was before that Statute) warranted by the Common Law which did still remain in force so farre as it was not expresly contrary to the further particulars of that Act.

And now VVe come to the Objection principally intended against this Commission upon the alteration of the Law at this day since 5. H. 4. wherein the case is this:

The Statute of 13. E. 1. made an assize of Arms for the severall kinds and proportions according to mens severall estates. Then 5. H. 4. enacts this Commission with power to assesse men according to their abilities. Afterwards 13. E. 1. is repealed by 25. Ed. 3.

The Argument hereupon in the Declaration is made thus: That the Commission as to the finding of Arms *Juxta statum & facultates*, is so grounded upon that Statute of 13. E. 1. (which was then in force, and did enact the finding of Arms *Juxta statum & facultates*, in manner as is therein expressed) that that Statute of 13. E. 1. being since repealed, that Commission is likewise repealed and become unwarrantable at this day.

For answer whereunto, in the first place, VVe do deny that this Commission is any wayes grounded upon 13. E. 1. First, for that (as VVe have proved) 13. E. 1. originally was not ment as a provision of Arms for defence extraordinary, much lesse so intended here.

Secondly, if it were for defence extraordinary, yet neither this Act of 5. H. 4. nor the Commission thereby settled, have any relation thereunto in words much lesse in meaning.

For the words there is no mention of 13. E. 1. either in the Act or Commission but the words of the Commission are generall for imposing Arms *secundum statum & facultates*; According to every mans degree and ability, without limitation, of the kind of Arms, or particular severall proportions of estates.

And for the meaning, VVe cannot conceive it to be lesse then according to the full extent of the words: For there is lesse reason to imagine that the Parliament of 5. H. 4. did any wayes intend the assize of Arms established by 13. E. 1. then there was to imagine the like upon the Act of 1. E. 3. for that between 1. E. 3. and 5. H. 4. all kind of Armes were more altered then betwixt 13. E. 1. and 1. E. 3. and in this space of time Guns were come into use in *England*, which were both necessary to be commanded and provided against by other Arms.

And to avoid Repetitions, VVe further refer Our self, in these two particulars, to what VVe before observed upon the Statute of 1. E. 3.

And as for any restraint of those generall words of Our Commission, by any construction of Law to the particular assize of 13. E. 1. We say, That though a subsequent particular Act may restrain the generall words of a Commission (as We have said before

upon

upon the Statute of 4. and 5. *Ph. & M.*) because the subsequent Act, as it may take away, so it may limit any Power given either by Common Law or Statute, yet a precedent particular Act (upon the same reason, because it hath no such Power) doth not regularly restrain the generall words of a subsequent Statute, which hath Power to controll the former; and (as in Our case) where the meaning appears to be as large as the words cannot possibly restrain them.

But in this We need not labour; For though the Declaration in making way for this Objection, admits the Commission, to have some colour to be legall, as grounded upon 13. E. 1. as to that part of findings Arms *juxta statum & facultates*: Yet it is the main and throughout ground of the Declaration, *That this Commission, because it is generall, is against the Statute of* 13. E. 1. *and the other Statutes, and so void*; whereas, if the Commission had been restrained to 13. *E.* 1. then it could not have been void as contrary thereunto.

But, admitting that this Commission was, by construction of Law, necessarily to be regulate according to 13. *E.* 1. whilest that Statute was in force; Our Answer is, that nevertheless this Commission did not fall by the repeal of that Statute.

Wherein We shall admit (which the Declaration supposeth, though by Us it is disproved) That this Commission was not warranted at the Common Law before the Statute of 5. H. 4. and then the Case is but this:

The Statute of 13. *E.* 1. doth appoint a particular Assize of Arms for kinds and proportions, according to this necessary rule, the arms of the *kind* shall be fit for defence; and for the *proportion*, shall be according *to mens abilities* (for such is the Act.) Afterwards 5. *Hen*, 4. doth establish this Commission, wherein there is no particular reference unto this Statute of 13. *E.* 1. but the rule is generall to charge Arms, for the kinds, according to the use of the time (for that is necessarily implyed) and for the proportions, according to mens degrees and abilities, which are equall rules fit ever to continue though the kinds and porportions may and must alter.

In this case VVe do agree, That if the Commission had expressly referred to charge according to that Statute of 13. *E.* 1. then that Commission could have been no longer of force then the Statute had continued. For then it had been no more in substance, then if the powers had been but particular, to charge certain Arms, and in certain proportions according to that Statute: And in this sence VVe must agree with the Declaration, That a Commission being so grounded upon a Statute, upon the Repeal of the Statute, both fall together.

But in this case, (thus admitted) where the Commission is generall, and if 13. *E.* 1. had never been, must have had its full operation, according to the words, both for the kind of Arms and Proportions, and was regulated but by a bare construction of Law, both for Arms and Proportions by 13. *E.* 1. which the Parliament might thinke fit to be a rule for that time; it seems strongly to follow, that when 13. *E.* 1. (which was the onely impediment why it did not work according to the extent of the words) is repealed, the operation of the Law upon this Commission, by force of that Statute, must likewise cease: and the Commission must be construed according to the words the rather for avoyding of this mischiefe, that otherwise the Kingdome should be without all necessary meanes to

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put it into a posture of defence, which that Act did intend principally and perpetually to provide for.

For more fully to take off this Objection, VVe must here remember (what VVe have proved before) that the Powers of this Commission in the latitude of the words thereof for imposing Arms, *secundum statum & facultates*, according to mens degrees and abilities, was warranted at the Common Law before any Statute, and was to be executed without the direction of any particular Assize for kinds and proportions: As at this day several like powers for assessing men both by Statute and Common Law according to their abilities, as for high wayes, poore of the Parish, and the like, are to be executed.

These then being the Powers at Common Law, As it is clear they are not taken away by any affirmative Statute, (such as 13. E. 1. seems to be.) So if We shall admit (as strongest against Our Self) that there were any negative words in this Statute or any other Statute grounded thereupon, that the Subject should not be compelled to be armed otherwise, which other Statues) according to the ground rightly taken in the Declaration) must necessarily fall by the repeal of 13. E. 1. then that Statute being repealed, the Commission thus freed of those Statutes, remains in full force as it was at the Common Law.

And now that We have passed over the Acts of Our Predecessours as well before as after the Act of 5. H. 4. We are encountred with Our owne Acts, the Petition of Right, and a Recitall in an Act this present Parliament as being both against Our Commission.

VVhereunto VVe need to say but this, That it appears out of themselves, that neither of them were ever meant to introduce a new Law: So as if (as VVe have proved) Our Commission be not against the Law, as it stood formerly, they were not intended nor justly ought to be extended against it. But to give yet more particular and full answers thereunto; VVe say, first, for the Petition of Right, it no wayes extends to Our Commissions of Array.

The Objection made upon it stands thus, The Petition of Right sets forth, That by the Laws and Statutes of this Realm the Subjects have inherited this Freedome, That they should not be compelled to contribute to any Tax, Tallage, Aid, or other like charge, not set by common consent in Parliament. And after complaints, That divers charges have been laid and levied upon the People by Lords Lieutenants, Deputy Lieutenants Commissioners for Musters Justices of Peace, and others by command or direction from Us, or Our Privie Councell, against the Laws and free Customes of the Realm, which the Declaration alledgeth to be the breach of those Laws.

Then the words of the Pitition are thus applyed, That there is a Tax or Charge imposed upon the people, by compelling them to finde Arms by command and direction from Us under Our great Seal without consent in Parliament.

And the meaning of the Petition is thus inforced, That it is very well known, and doth sufficiently appear, that the charges there mentioned to be laid by Lords Lieutenants, and Deputy Lieutenants, were the charging of the Subjects with Arms against Law, by colour of their Commission from Us, and consequently this Commission is against the Petition of Right.

For

For Our clearer Answer, VVe shall set down the sum of the Petition, for so much as concerns the unlawfull charging of the Subject. And it is this:

First, the Petition recites several Statutes, & made against the compelling the Subject to the making or yeelding any Gift, Loan, Benevolence, Tax, Aids, or such like charge without common consent in Parliament; and next, seeketh forth a violation of those Statutes by the Commissions of Loans, and Execution of them; and that divers other charges had been laid and levied by Lord Lieutenants and others (as is aforesaid. And lastly, the Prayer is subjunctively of it self, without any relative words, yet extends to all that was before complained of, and contains the substance of all those former Statutes in these words, *That no man be compelled, to make or yeeld any Gift, Loan, Benevolence, Tax, or such like charge without common consent by Act of Parliament.* And Our Answer to that part of the Prayer, amongst the rest, is, *Let right be done as is desired.* And Our Answer to the Objection stands thus:

First, That whatsoever sence any words of the Preamble may seem to impore, yet without question, there is no more in this Preamble then is after contained in the Prayer: So if Our Commission be not against the Prayer, there can be no argument against it drawn out of the Preamble, or if in truth there were more in the Preamble then in the Prayer (whereunto onely the Royall ascent extends) yet nothing could bindingly be concluded thereupon (as VVe shall further shew upon examining

This then onely rests to be considered upon this Objection, Whether the powers in Our Commission, to compell the Subjects able of body and estate to arme themselves, and in case of impotency to finde armes for others, for the necessary defence of the Kingdome, can be said to be a compelling of the Subject, *To make or yeeld any Gift, Loan, Benevolence, Tax, or other like Charge contrary to the prayer of the Petition.*

Upon the Case thus truly stated, it is cleer, That here is *no yeelding or making of Gift, Benevolence, or Loan*; And as for *making or yeelding any Tax or other like charge*, though it be true, That this arming a mans self, or finding arms for another cannot be done without charge, Yet VVe appeal to every mans understanding, whether Our Subjects can, upon this Commission, be said *to make or yeeld* (for so are the words) *any Tax or other charge* against the Petition, any more, then if VVe command a City to repair their walls, or a Levell (putting the case before any Statute) to take away all colour of evasion to repair the sea-banks, when they were in decay, being no particular advantage to Us, but for the common good of themselves.

The truth is, That albeit the imposing of divers charges and commanding divers Acts drawing charges upon the Subject, though possibly for their advantage, are void in Law: notwithstanding it doth not follow that they are void as against this Petition: For the Petition of Right, as against the charges therein mentioned, is onely to be intended of Mony, or other thing valuable, and to be parted with to or for Us, or Our advantage: such as are all the charges more specially mentioned in the Preamble and Prayer, as that of Gift, Loan, and Benevolences, and such as were those charges intended in the Preamble under the generall expression of divers other charges imposed by Lord Lieutenants, &c. which We

We think is very well know to most Countries, to have been mere Pecuniary payments, and which We ought to have born. And for the other charges that is of Taxes, Tallages, Aids likewise mentioned, which as to this purpose are but *Synonyma*, and of one signification, they are meant of Mony or other things valuable, and for the King; and so used in the old Statutes, and had been in former times imposed upon the people without Act of Parliament; and accordingly all of them are so to be expounded in the preamble. And the prayer of the petition saith nothing expresly against the Commanding the Subject to do a thing which may be necessarily of expence or charge, (wherein the Act is onely intended, and the charge but a necessary Incident) but the prayer is onely against the compelling of the Subject *to yeeld or make* those kinds of charges: So as the cleer sence of the petition, both according to the occasion of complaint therein mentioned, and the Laws whereupon it is framed, as well as the propriety of the words, is onely against drawing from the Subject, either money or money-worth, by any of those particular charges therein mentioned, or any other charge of like nature (under what specious title soever) for the Kings advantage, which the more plainly appears, for that the charge must be *yeelded or made*, as upon *Gift, Loan, &c.* which must necessarily be intended unto some *person*, and no other person can be here colourably intended but the *King*.

10 And if the Petition, by any construction, may extend against the commanding of any Act which in the execution may induce charges, yet such charges must (according to the very words of the Petition) be *such like Charges*, that is, for Us or Our advantage, as the particular *Charges therein mentioned, of Gift, Loan, &c.* But this charging of the Subject with Arms for the necessary defence of the Kingdom cannot be said for Our particular advantage, all Our Subjects having therein a common interest.

20 As for the meaning of the Petition inforced in the Objection from the Charges by Lord Lieutenants, and others complained against in the Preamble, sure We are that those must be such in the particular, as are after contained in the generall words of the Prayer, to which We have answered before: And though it be to this purpose said in the Declaration, That those *Charges by Lord Lieutenants and others*, were meant of *charging of the Subject with Arms*; certainly no such thing can appear in the Petition, which speaks but onely of *divers charges*, but names none in particular; nor can there be any other assurance that the Houses did intend any such thing, but by Votes wherein they onely speak: and if any such Votes had been, We doubt not but We should have found them inserted in this Declaration: And a particular complaint of so great a grievance (as Our Commission is made to be) would have been expressed in the Preamble of the Petition, with the Quotations of Statutes to the contrary, as was done concerning other grievances. But in truth it is well known, That about that time, upon occasion of Our warres, there were divers other charges imposed by Our Lieutenants, and others, of a farre differing nature, most of which were by direction from Us or Our Privie Councell, according to the exigency of the time and some former practise.

And We do beleeve, that there was at that time neither complaint or occasion of complaint against the imposing of Arms for home-defence of the Kingdom. Howsoever We are sure that no such complaint was particularly represented unto Us, or Our Answer intended thereunto.

And now to clear this sense of the Petition out of the judgement of both Our Houses this very Parliament, We demand this Question: If so be the imposing Arms for defence be a charge upon the Subject within the meaning of this Petition, how the two Houses will justifie their Ordinance, which We are sure they will not call an Act of Parliament; for without an Act of Parliament no charge thereby provided against, can be imposed upon the Subject; the words being plain, That no man shall be compelled to make or yeeld any Gift, Loan, Benevolence, Tax, or other such like charge, *without common consent by Act of Parliament.*

And now since this Declaration hath given us such occasion to examine Our Commission upon that Petition of Right, We shall conclude our of that Petition, That that Parliament did conceive the powers of this Commission warrantable in every point.

For it is plainly to be observed, that the Commons did then take into consideration the generall grievances of the Kingdom, more particularly concerning Military affairs, and therein the actions of Lord Lieutenants, and deputy Lieutenants with their Commissions and powers, and their exceeding of their power, as expresly the billeting of Souldiers, and the payment of Billet-money, Muster-masters fees, and others of that nature, were then in dispute. And although the two Houses could not but take notice of the imposing of Arms upon the Subject by our Commission of Lieutenancy, and their powers to Levy, Call together, Arm, Array, Train, and Muster Our Subjects inhabiting in Our severall Countries, and to conduct and lead them against all Our Enemies, and all Rebels and Traytours, from time to time, as need should require, (in which particulars they contained the powers of Our Commission of Array:) Yet the Complaint was not made against them, for what they did by vertue of their Commission (no more then against the Justices of Peace, though complained of, together with the Lieutenants;) but for matters wherein they did exceed their Commission, upon the Command, or direction from Us, or Our Councell; the Petition throughout distinguishing betwixt such Commands, or Directions, and Our Commissions.

So that we conclude, here was not onely an admission, but an approbation of those powers by that Parliament.

We come now to the recitall in the Preamble of the late Statute made this Parliament. The words are these.

For as much as great Commotions, and Rebellions have been lately raised and stirred up in his Majesties Kingdome of Ireland, *by the wicked plots and conspiracies, of divers of his Majesties Subjects there (being strangely affected) to the great endangering not onely of the said Kingdome, but also of this Kingdom of* England, *unlesse a speedy course be taken for the preventing thereof, and for the raising and pressing of men for those Services. And whereas, by the Laws of this Realm, none of his Majesties Subjects ought to be impressed, or compelled to go out of his County, to serve as a Souldier in the Warres, except in case of necessity of the suddencoming in of strange Enemies into the Kingdom, or except they be otherwise bound by the Tenure of their Lands or possessions, &c.* (upon which Preamble, there is, in that Statute, some provision made for a time for raising and impressing men for those Services.)

And

And upon this Preamble, the conclusion is made in these words, *That this Commission is directly contrary to this Declaration is so evident, that it requireth no application.*

To this Objection, We say, We might make Our Answer as short as the inference is, by affirming, That it is evident, that this Commission is not contrary to this recitall, And surely We think that what We have already opened, being applied to this objection, would warrant that Answer.

But that We may leave nothing undone, that may tend towards the full satisfaction of Our good people, We shall also give this a particular answer.

First, We say, That if this recitall had been an Act, yet there were nothing in Our Commission contrary to the letter of it, for that by this Commission, no man is compellable by any speciall words to go out of his County.

And the generall words, (giving power to the Commissioners, for leading them to the Sea-coast or elsewhere (as We have repeated) are with these limitations: They are to lead them, but when there is imminent Danger of enemies, for defence of the Kingdome; and then onely they are to be led to such places, as shall be necessary for expulsion, vanquishing, and destruction of the said enemies. And this is a case of necessity both within the words of this recitall, and according to the sense of the same words, in the Statute of 1. *E.* 3. and 4. *H.* 4. (therein meant) as We have before shewed.

And thus We might leave this Objection, but that it implies a matter of a greater consequence then plainly appears, That recitalls of the Law, in Preambles of Statutes are binding; For in this Objection, this recitall is called *a Declaration of the Law*, and Our Commission said to be *contrary to that Statute*, and it further implies, That even in the greatest and most horrid Rebellion, the Subject cannot be compelled out of the County, for the suppression thereof. But to this We answer, That the difference is apparent, between an Act of Parliament declarative, and a recitall in a Preamble: For such an Act (in any matter though mistaken) being assented unto by Us, and Our two Houses, is equally binding (as having equall authority) with an Act introductive of a new Law: But the recitall in a Preamble, is no part of the Act (the Royall assent being onely to that, which is expressely or tacitely prayed to be enacted) (Nor can it any wayes so much as imply Our opinion: For otherwise, Kings must be inforced oftentimes to deny a good Law for an ill Preamble; The consequence whereof is great in such an Act as requires expedition, where a Bill once denyed, is not regularly to be offered again in that Session of Parliament.

And if it were needfull, divers mistakes of the Law in Preambles might be produced by which We would be loth to bind Our Subjects.

Nevertheless, though Preambles be not in themselves sufficient to declare Laws, yet We deny not they are of good use, though not convincing Arguments to expound them.

And for Our power in the matter of Rebellion, besides what hath beene said, Wee might also adde (if it were materiall to this Commission,) Preambles, Recitalls, and other necessary Inferences out of other Statutes (made since those intended in this Recitall) which would prove, that in case of Rebellion, all Our Subjects ought to assist Us, and to attend Our Person, upon Our command

mand, for the defence thereof, whensoever We should require it.

See 1. *H.* 7. *in the preamble. That the Subjects by the duty of their Allegiance, are bound to serve their Prince in his Warres, for the defence of Him and the Land, against every Rebellion, power and Might levied against Him.* And 11. *H.* 7. cap. 1. *Whereas every Subject, by the duty of his Allegiance, is bound to assist the King with all services when need shall require; and most especially such as have by Him promotion or advancement, as Grants, and Gifts of Offices, Fees, and Annuities, which are, and verily be bound by reason to give their attendance upon his Royall Person, to defend the same, when He shall fortune to go in his Person in warre, for defence of the Realm, against his Rebels and Enemies.* And 5. El. cap. 5. *Be it enacted in favour of Fishermen and Mariners, That none of them shall hereafter at any time be compelled against his or their will, to serve as a Souldier upon the Land or Sea, otherwise then as a Mariner, except it shall be to serve under any Captain of some Ship or Vessell for landing, to do some especiall exploit, which Mariners have used to do, or under any other person, having authority to resist and any Invasion of Enemies, or to subdue any Rebellion within the Realm.* And see 19. H. 7. cap. 1, 2. & 3. E. 1. c. 2. And 4. and 5. *Ph.* & Mar. cap. 3.

And the truth is, the occasion of this Act, now urged against Us, appears to be for the service of *Ireland*, and the intention of it (for so much as is the enacting part) was to take away all question concerning the pressing of the Subjects of *England* for the suppression of the Rebellion in *Ireland*; and is concerned herein service, and not home-defence, either against Invasion of Enemies or Rebels.

And thus farre the work of the Declaration hath been to overthrow Our Commission by Statutes alledged to be directly against it. There remains yet some other Objections drawn from the opinion of former Parliaments, and the praxis of Our selves and Our Predecessours, and those not directly, but by inferences. But these as We shall shew, are so farre from concluding against Our commission, that they rather prove the contrary.

The first of these Objections is upon the Statutes of 2. *Jac.* c. 25. and 21. *Jac.* c. 28. of Repeals, and is thus, That the Statute of 4. and 5. *Ph.* and *M.* c. 2. having repealed this Commission (for so the Declaration supposeth) they had shewed little care of their own and the Subjects liberty, in the Parliament of 1. *Jac.* to repeal that Statute thereby to revive the power of this Commission, which would have subjected the people to farre greater bondage: and from thence inferreth, That it is not probable that the Parliament of 1. *Jac.* would have repealed 4. and 5. *Ph.* and *M.* As likewise from the Statute of 21. *Jac.* (which repealed the Statutes of 13. *E.* 1. and 33. *H.* 8.) That it is not probable that the Parliament of 21. *Jac.* would have repealed those Statutes (which in a moderate manner proportioned the Arms every man was to finde in certainty:) And suffer an Act (meaning this of 5. *H.* 4.) to continue, which established a power in the King without limitation, not only to impose Armes, but to command the persons of the Subjects at pleasure.

To this We say, that both the grounds of this Objection are mistaken. For (as We have already shewed) neither is this Commission repealed by the Act 4. and 5. *Phil.* and *Mary*. Nor is there any such unlimited Power given, or Bondage

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by it, as is pretended. And therefore Our answer is, That it is no wonder that those Parliaments might repeale 4. and 5. *P.* and *M.* as too hard; and 11. *E.* 1. and 33. *H.* 8. as of no use: and put the *Militia* of this Kingdome againe wholly under the powers of this Commission, (being so indifferent betweene both the other: And indeed the *Militia* did after continue under Lievtenants, who had in effect the powers given by this Commission.

And now We shall returne this Objection thus.

That those Parliaments of 1. *Iac.* and 21. *Iac.* would have shewed little care of the safety and defence of the Kingdome to have repealed those Statutes which made provision for Armes, if they had thought there were no Law or power left in the King to charge men with Armes for defence of the Kingdome, (as the Declaration affirmes the Law now to be.)

But whosoever considers that at that time, and long before, the power of imposing Armes, was put in execution by Lievtenants, and Deputy Lievtenants, by Authority of their Commissions (which to this purpose are the same with Our Commissions of Array) and that this power was not complained of in those Parliaments, must conclude it more than probable, that those Parliaments did then conceive there was a sufficient power remaining in the King to impose Armes.

The next Objection, is from the opinion of the Parliament of 4. and 5. *Philip* and *Mary*, *c.* 3. That if Our Commission had beene authorized by Act of Parliament, that Statute of *Phil.* and *Mar.* had beene to little purpose, whereby the penalty of Imprisonment for tenne dayes, or fourty shillings is imposed upon such as doe not appeare at Musters, being Summoned for that purpose: Intimating, as that the Act of *Phil.* and *M.* would never have beene made, if they had then conceived, that wee had power to grant such Commissions.

To this we answer.

That the particular Armes and proportion of Armes were then before appointed by the Statute of 4. and 5. *Phil.* and *Mar.* *Cap.* 2. under certaine penalties upon those who shou'd be defective, and so a great part of the care of the Commissioners of Array was supplyed by the provision of that Statute; and the Commissions of Array being not so proper, but in time of danger, and of a larger extent, then the power of mustering, a Commission of Muster (which is part of the power of a Commission of Array) would then serve the ordinary turn: and for every ordinary default, but at a Muster, in a time of no danger, the punishment by 4. and 5. *Phil.* and *Mar.* *cap.* 3. was great enough.

And for returne of this Objection, We say, (as Wee observed before)

That this Statute gives no new power, to grant Commissions for Musters, but admits the power to grant such Commissions to have beene in the King before that time. And whereas the Statute of 13. *E.* 1. appoints no other Officers but the Constables for view of armes, it appeares by these Statutes of *Phil.* and *Mar.* that the King might appoint His Commissioners: which he could not, if this power of arms had bin wholly grounded upon that Statute. The last objection of this nature, is grounded upon the Common opinion or practice; and is this.

That the Commissions of Lievtenancy, so grievous to the people, and declared illegall in Parliament, had not beene so often issued, and so much presled upon them, if the Commission of Array, not much differing from it in power, and not at all lesse grievous to the Subject, might by the warrant and authority of the Lawes of this Realme, have supplied their roome.

To this our answer is, that it stands upon two grounds: First, that the Commissions of Lievtenancy were grievous; Secondly, that they were illegall: both which so farre forth at least as to the powers wherein they did not exceed the power of this Commission (for the other powers are not now in question) are clearely mistaken.

For, as the grievousnesse, wee say these Commissions were such as had beene long used in the happiest times of our Predecessours, and continued to our time: And such grievances, as did or might arise in the execution of these Commissions, not warranted by them, are no cause to quarrell at the Commissions themselves, more than at the Commissions of Peace, because some Iustices have exceeded or abused their authority. And however, those powers wherein they exceeded not Our Commission of Array could not be grievous, as we have already shewed.

And as for the illegality of those powers, We shall not, nor will Our people bee satisfied by bare Votes, that they are illegall, the same being done, without hearing of Our Councell, and without advising with the Iudges and demanding their opinions, (a course which was formerly used in Parliaments, as appeares even by this Record of 5. *H.* 4. amongst many others, but in matters of Law, which have of late risen in our Houses of Parliament hath (for what cause We know not) beene laid aside.) But we againe say, these powers in our Commissions of Lievtenancies are legall, and if there be any clauses in such Commissions which are illegall, those clauses could not at all make the Commissions void, for so much as was legall, much lesse take away Our power of granting new Commissions, omitting such clauses.

But if We should, for this time, admit the grounds of this objection,

That

That our Commiſſions of Lievtenancie had beene ſuch as this Declaration would have them, yet it is but a very inconſequent Argument, that thoſe Commiſſions would not have iſſued ſo often, and been ſo much preſſed, if the Commiſſions of Array had beene Legall.

For the Commiſſions of Lievtenancy contained not only moſt of the powers of the Commiſſion of Array, but in many things exceeded them, and were iſſuable in times of Peace, whereas Commiſſions of Array commonly iſſued in times of danger only: and ſo there was occaſion for the one Commiſſion, when there was none for the other.

But on the contrary, (that We may retort this objection alſo) ſince that the Commiſſions of Lievtenancy, not much differing from the Commiſſions of Array in Power, as the Declaration ſaith) and in many things exceeding them, have ſo often iſſued in the reigns of ſeverall of Our Predeceſſours, and were allowed by the Iudges of thoſe times, obeyed without diſpute, and not queſtioned in the Parliament of 1. *Iac.* or 21. *Iac.* nor were theſe powers wherein they agreed with the Commiſſion of Array complained of by the Petition of Right, but rather admitted and allowed, as We have already ſhewed, it may very well be inferred that both the Commiſſions of Lievtenancy and of Array, (as to thoſe powers at leaſt wherein they agreed) were Legall and farre from being any grievance to the Subject.

Thus farre We have proceeded in the Examination and clearing of the objections made againſt our Commiſſions of Array. Vpon all which objections, We ſhall further obſerve: That although the Declaration denies Our power at this day of commanding *to traine and exerciſe*: yet none of thoſe objections touch any thing upon thoſe Powers. So that if all were true which is objected, yet Wee ſhould ſtill have power (at leaſt by a diſtinct Commiſſion) to command Our Subjects to be Diſciplined, Muſtered, Trained and exerciſed, with ſuch Armes as they had in a readineſſe; for that (as We have ſhewed before) theſe are diſtinct from the power of *Impoſing of Armes*, and may be ſeverally granted or executed.

And upon the whole matter, the ſtate of Our caſe is this. It is Voted by our Houſes of Parliament, That our Kingdome is in imminent danger of deſtruction from enemies abroad, and a diſcontented Party at home; and that there is a neceſſitie to put Our people into a poſture of Defence.

In this caſe, for defence of our ſelves and our Kingdome, we have awarded our Commiſſions of Array, thereby giving power to the Commiſſioners (perſons wee hope, beyond exception) to cauſe our Subjects to arme themſelves, or, if impotent in body, to find armes for others, according

to their abilities, in a reasonable and moderate proportion and to muster and traine them at convenient times and places, and afterwards, upon occasion to lead them, where there is a necessity for the defence of the Kingdome, and the Expulsion, vanquishing, and Destruction of enemies.

And Wee have shewed, That the Powers of these Commissions are grounded upon the very principles of government, and that without them Wee could not defend, and protect Our Subjects, (as Wee are bound by Our Oath at Our Coronation) That they are warranted by the Ancient Common Law, allowed by the constant practice of former ages, established by the Parliament of 5. *H.* 4. (which caused a Copie of these Commissions to be entred upon the Roll, as a Rule or President for after times) and are not repealed, or altered by any Statutes now in force.

And yet, though this danger, and the necessity of putting the Kingdom into a Posture of Defence, is thus agreed by both Houses; nevertheless, this Commission, and all others of like nature, are by their Declaration said to bee illegall; And it is thereby denyed, That We have, at any time, Power to charge Our Subjects with any manner of Armes (though for the absolute necessary defence of the Kingdome) or that Wee can command them to bee trained or exercised, much lesse to bee led out of the Countie, though an Enemy be ready to enter, or though Rebels be actually up in Armes.

How far this opinion is consistent with Law, Reason, or regall power, the safety of Our selves, and our Subjects, upon all this which Wee have said) We leave to all our good people to consider.

And since Our two Houses (denying Vs this power) without Vs, and against our consent, have made Orders (which they call Ordinances) for compelling our Subjects to bee armed, trained, exercised, mustered, and conducted, and send for Our Subjects as Delinquents, and imprison them, for refusing to obey such orders; It is apparent, That what this Declaration saith against our Commission, without just ground, is true indeed of those orders, that is, That they are contrary to the Law and Customes of the Realme, destructive to the Liberty and Property of the Subjects, and contrary to the Petition of right (as it is expounded in this Declaration,) as also against other Statutes.

His

His Majesties Declaration,

In Answer to

A Declaration of the Lords

and Commons assembled in

PARLIANENT,

For the raising of all Power and Force, as well Trained Bands as others, in severall Counties of this Kingdome, to lead against all Traitors and their Adherents, &c.

AS much experience as We had of the inveterate rancour, and high insolence of the Malignant Partie against Vs We never yet saw any expression come from them, so evidently declaring it, as the Declaration, intituled, A Declaration of the Lords and Commons assembled in Parliament, for the raising of all Power and Force, as well Trained bands as others, in severall Counties of this Kingdome, to lead against all Traitors, and their Adherents, &c. In which that Faction hath, as it were, distilled and contracted all their falshood, insolence and malice; There being in it not one period, which is not slanderous or treasonable. And nothing can more grieve Vs, then that by their infinite Arts and subtiltie (employed by their perpetuall and indefatigable industry) and by that rabble of Brownists, and other Schismaticks declaredly ready to appeare at their call, they should have beene able so to draw away some, and drive away others of Our good Subjects from our Parliament, as to prevaile with the major part remaining of both Houses (how much soever that Major part be the smaller in comparison of the whole) to suffer that name (whose reverence by all meanes Wee desire to preserve to be so soiled; as to bee prefixed to a paper of this unsufferable nature, that tends not only to the destruction of Our person, but to the dissolution of this Government and all Societie; if at least this Declaration (which We rather see cause to hope it hath not) hath so much as

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beene ſeene in the Houſes, and bee not the ſingle worke of the ſame omnipotent Commitee, to which is devolved the whole power of the Parliament, and which, as Wee underſtand, is truſted (without acquainting the Houſes) to break up any mans Houſe, and take away the Armes and money intended to defend and feed him, (if they ſhall ſee cauſe to ſuſpect that he meant to aſſiſt his Soveraigne with them) and may well be as fully and implicitely truſted to Declare, as to Act whatſoever they pleaſe. And though we doubt not, but to their utmoſt they will continue that injurie to Vs, and that violation of the Subjects libertie, and of publike right, to vex and impriſon thoſe, who ſhall publiſh any of Our Anſwers to their Declarations, (and indeed whileſt they affirme againſt all truth, and command againſt all Law, it concernes them to take care, that nothing be heard but what they ſay) yet our comfort is that our intentions, and the duty of our Subjects are ſo well, and ſo generally known to Our people, that We cannot fear (from whomſoever it come, and though no anſwer came out with it) that, either what is there ſaid, ſhould bee believed, or what is there commanded, ſhould be obeyed. Who knows not that our Commiſſions for horſe and foot were not granted out, till not only our Prerogative, but our proprietie, our goods, armes, towns, Militia and negative voice were taken from us, and all the Kingdom commanded to be in armes, and invited to bring in horſe, plate and money, to frame an army againſt our Command and Proclamation, and till horſe were raiſed and muſtered accordingly: And then, with no intention (nor hath any action in any of our Miniſters given the leaſt ſuſpition of ſueh an intention) by them to compell our Subjects to ſubmit to our Commiſsions of Array, or make uſe of them againſt the Parliament; but to regain Hull held out in rebellion againſt us, and to ſuppreſſe all ſuch, as without our authority, and againſt our commands, ſhould raiſe forces in this our Kingdome, and aſſemble themſelves to levie warre againſt us, under pretence of any Order or Ordinance of one or both Houſes; yet now theſe traiterous Aſſemblies, and marches are alledged as the only lawfull and neceſſary occaſions of our good Subjects, which have beene ſo much interrupted by our Troopers. As for that which is affirmed of the ſpoiling and killing them, as they were ſo travelling under our protection, and according to law, it is a moſt malitious affirmation, as well without truth as without inſtance, invented at once to make our Troopers terrible, and us odious to our people. What care we have taken, that by this meanes the power of the ſword ſhould not come into the hands of Papiſts, who have by our Proclamation ſtrictly charged, that no papiſt ſhall preſume to liſt himſelfe, either as Officer or Souldier in this our Army, having directed how he ſhould be diſcovered, if he did preſume; and ſuffer, if he were diſcovered.

ſcovered. What further care We have taken to avoid combuſtion and civill warre, offering to lay downe our Armes, when they ſhall have laid downe theirs (in whom it was Treaſon to take them up) and reſtored us thoſe things, which could not without treaſon, as well as injuſtice bee forced away, and kept from us, our armes, ſhips, towne, &c. and when wee might meet both our Houſes in a ſafe and ſecure place, to debate freely of all the differences in a Parliamentary way: And by whoſe influences theſe propoſitions were rejected, and whether the Propoſer, or rejecters, were moſt carefull to avoid this ruine and deſolation of the Kingdome, Wee leave all the world to judge; And whether they who divert the men and money collected for the reliefe of diſtreſſed Ireland, to raiſe forces againſt their Prince (who askes them nothing but what is legall, nor will deny them any thing that is) doe not joyne with the popiſh and Jeſuiticall faction in the bloody Maſſacre of many thouſand Proteſtants in that miſerable Kingdome. We propoſe likewiſe to every mans judgement, whether the declaring thoſe to be traitours, who execute our Commiſſion of array (iſſued in ſo many Kings reigns, agreed upon by Parliament, and there yeelded to by the King, to be ſetled as now it is, as a matter of great grace, and ſince that time, which was in 5. H. 4. in no Parliament complained of) whileſt our good Subjects are vexed, and impriſoned, not only for reſiſting, but for humbly petitioning, ſo as may ſeeme but to inſinuate ſomething againſt their moſt illegal commands concerning the Militia, (to which power of commanding, no title can be made by any Statute, or any Precedent; nor can wee ever finde by ſearch, nor obtaine to be told, what thoſe fundamentall Lawes are, by which it is pretended; ſo deepe thoſe foundations are laid beyond all meanes of diſcovery) and the declaring that thoſe who raiſe men by vertue of our command and commiſſion (the only legall way) traiterouſly and rebelliouſly levie warre againſt the King; and ordaining it, to be lawfull for all our Subjects, by force of armes to reſiſt them, and their accomplices, and the raiſing of forces by authoritie of Parliament, (that is by the remaining part of both Houſes) never in the moſt outragious times before attempted, and commanding ſeveral perſons whom they call Lievtenants, to leade, and giving them power to tranſport, from one Countie to another, the forces of ſeverall of our Counties againſt them, and to kill and ſlay all ſuch as by force ſhall oppoſe them our ſelf not excepted; commanding all our officers and ſubiects, to be aſſiſting to them, and undertaking to ſecure them for ſo doing, by the power and Authoritie of Parliament (which is firſt to allow, and next to command, & then to pardon treaſon) be not to have already ſubverted, as much as in them lies, the liberty of the ſubject, the law of the land, & altered the

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ancient government of the Kingdome, leaving our subjects without all rule to walke by, when the most cleare lawes cannot direct, and secure them, and they see all those ancient bounds passed over, which were ever as much knowne to be the dutie of both Houses to observe, as it was evident, that there were, and that it was necessarie that there should be two Houses of Parliament, and at once behold the law (which is to defend and protect the Subject) and us (who are to protect and defend the law) need defence, and protection: Wee doubt not therefore but all our good Subjects will come in to our assistance, and that this wicked charge of intending to introduce Poperie, Idolatry, and Arbitrary government, laid by implication upon us (because we defend our selves, and would recover our owne) will be so farre from being a motive against us; that this intolerable indignitie, and damnable scandall so dayly and visibly confuted by all our Professions and actions) will encrease our good Subjects Zeale towards us, and their indignation against the contrivers; and they will esteeme themselves obliged by the Religion of Almighty God to oppose this warre, so impiously, so treasonably, and so groundlesly made upon us their King, and his Anointed; We therefore require all our Commissioners of Array, Sheriffes, and all other Officers and Ministers to raise all the power and forces of their severall Counties to assist the Marquesse of Hertford, the Earle of Northampton, the Lord Willoughby of Eresby, the Lord Pawlet, the Lord Seymour, the Lord Dunsmore, Henry Hastings Esquire, Sir John Stowell, Sir Ralph Hopton, John Digby Esquire, and all other in the legall and necessary execution of our Commissions of Array, and in the raising and conducting of such horse and foot, as shall be raised by our Commission; and by force of Armes to oppose the Earle of Essex, the Lord Say, and all other that shall raise or conduct any forces, raised by preteuce of Authoritie of both Houses, and the persons of all such Traitors, and their Adherents, and Accomplicies, to arrest and imprison; to the end they may be brought to a faire and legall tryall by their Peers, and according to the Law. And this wee require from them, as they tender the defence of our Person, the true Religion, the law of the land, the libertie and propertie of the Subject, and the true and just Priviledges of Parliament. And for so doing they shall be defended and secured by us, and by the law; with whom, and with which, wee doubt not but our Subjects will sooner choose to live and dye, then with the Earle of Essex and his Adherents.

FINIS.